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United States  
**Circuit Court of Appeals**  
For the Ninth Circuit.

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**Transcript of Record.**  
(IN THREE VOLUMES.)

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R. P. BUTCHART and CLARK M. MOORE,  
Plaintiffs in Error,  
vs.  
THE UNITED STATES OF AMERICA,  
Defendant in Error.

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**VOLUME I.**  
(Pages 1 to 320, Inclusive.)

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Upon Writ of Error to the United States District Court of the  
District of Oregon.

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**FILED**  
SEP 27 1922  
F. D. MONCKTON,  
CLERK



United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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(IN THREE VOLUMES.)

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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**Names and Addresses of Attorneys of Record.**

TEAL, MINOR & WINFREE and A. B. WINFREE, Spalding Building, Portland, Oregon,  
For the Plaintiffs in Error.

LESTER W. HUMPHRIES, United States Attorney, Old Post Office Building, Portland, Oregon,  
For the Defendant in Error.

---

**Citation on Writ of Error.**

United States of America,  
District of Oregon,—ss.

To the United States of America, GREETING:

You are hereby cited and admonished to be and appear before the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, within thirty days from the date hereof, pursuant to a writ of error filed in the Clerk's office of the District Court of the United States for the District of Oregon, wherein R. P. Butchart is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Given under my hand, at Portland, in said District, this 19th day of August, in the year of our Lord, one thousand nine hundred and twenty-one.

R. S. BEAN,  
Judge.

Service accepted Aug. 19, 1921.

LESTER W. HUMPHREYS,  
U. S. Atty. for Oregon.

[Endorsed]: No. C-7308. United States District Court, District of Oregon. *R. P. Butchart vs. The United States of America*. Citation on Writ of Error. U. S. District Court, District of Oregon. Filed August 19, 1921. G. H. Marsh, Clerk. [1\*]

---

**Citation on Writ of Error.**

United States of America,  
District of Oregon,—ss.

To the United States of America, GREETING:

You are hereby cited and admonished to be and appear before the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, within thirty days from the date hereof, pursuant to a writ of error filed in the Clerk's office of the District Court of the United States for the District of Oregon, wherein Clark M. Moore is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Given under my hand, at Portland, in said District, this 19th day of August, in the year of our Lord, one thousand nine hundred and twenty-one.

R. S. BEAN,  
Judge.

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\*Page-number appearing at foot of page of original certified Transcript of Record.

Service accepted 19th August, 1921.

LESTER W. HUMPHREYS,  
U. S. Atty. for Oregon.

[Endorsed]: No. C-7308. United States District Court, District of Oregon. Clark M. Moore vs. The United States of America. Citation on Writ of Error. U. S. District Court, District of Oregon. Filed August 19, 1921. G. H. Marsh, Clerk. [2]

---

In the United States Circuit Court of Appeals for  
the Ninth Circuit.

R. P. BUTCHART,

Plaintiff in Error,

vs.

THE UNITED STATES OF AMERICA,

Defendant in Error.

**Writ of Error.**

The United States of America,—ss.

The President of the United States of America,  
to the Judge of the District Court of the United  
States for the District of Oregon, GREETING:

Because in the records and proceedings, as also  
in the rendition of the judgment of a plea which  
is in the District Court before the Honorable Robert S. Bean, one of you, between The United States of America, plaintiff and defendant in error, and R. P. Butchart, defendant and plaintiff in error, a manifest error hath happened, to the great damage of the said plaintiff in error, as by complaint doth

appear; and we, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid, and, in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at San Francisco, California, within thirty days from the date hereof, in the said Circuit Court of Appeals to be then and there held; that the record and proceedings aforesaid, being then and there inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States of America should be done.

WITNESS the Honorable WILLIAM HOWARD TAFT, Chief Justice of the Supreme Court of the United States this 19th day of August, 1921.

[Seal]

G. H. MARSH,

Clerk of the District Court of the United States  
for the District of Oregon.

By F. L. Buck,  
Chief Deputy.

Service of the above writ of error made this 19th day of August, 1921, upon the District Court of the United States for the District of Oregon, by filing with me as Clerk of said Court a duly

certified copy of said writ of error.

G. H. MARSH,  
Clerk, United States District Court, District of  
Oregon.

By F. L. Buck,  
Chief Deputy.

[Endorsed]: No. C—7308. In the U. S. Circuit Court of Appeals for the Ninth Circuit. R. P. Butchart, Plaintiff in Error, vs. The United States of America, Defendant in Error. Writ of Error. Filed August 19th, 1921. G. H. Marsh, Clerk, United States District Court, District of Oregon. By F. L. Buck, Deputy Clerk. [3]

---

In the United States Circuit Court of Appeals for  
the Ninth Circuit

CLARK M. MOORE,

Plaintiff in Error,

vs.

THE UNITED STATES OF AMERICA,

Defendant in Error.

**Writ of Error.**

The United States of America,—ss.

The President of the United States of America,  
to the Judge of the District Court of the United  
States for the District of Oregon, GREETING:

Because in the records and proceedings, as also  
in the rendition of the judgment of a plea which is  
in the District Court before the Honorable Robert  
S. Bean, one of you, between The United States

of America, plaintiff and defendant in error, and Clark M. Moore, defendant and plaintiff in error, a manifest error hath happened to the great damage of the said plaintiff in error, as by complaint doth appear, and we, being® willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid, and, in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at San Francisco, California, within thirty days from the date hereof, in the said Circuit Court of Appeals to be then and there held; that the record and proceedings aforesaid, being then and there inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States of America should be done.

WITNESS, the Honorable WILLIAM HOWARD TAFT, Chief Justice of the Supreme Court of the United States this 19th day of August, 1921.

[Seal]

G. H. MARSH,

Clerk of the District Court of the United States  
for the District of Oregon.

By F. L. Buck,  
Chief Deputy.

Service of the above writ of error made this 19th day of August, 1921, upon the District Court of the



United States for the District of Oregon, by filing with me as Clerk of said Court, a duly certified copy of said Writ of Error.

G. H. MARSH,  
Clerk, United States District Court, District of Oregon.

By F. L. Buck,  
Chief Deputy.

[Endorsed]: No. C-7308. In the U. S. Circuit Court of Appeals, for the Ninth Circuit. Clark M. Moore, Plaintiff in Error, vs. The United States of America, Defendant in Error. Writ of Error. Filed August 19th, 1921. G. H. Marsh, Clerk, United States District Court, District of Oregon. By F. L. Buck, Deputy Clerk. [4]

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In the District Court of the United States for the District of Oregon.

July Term, 1916.

BE IT REMEMBERED, That on the 27th day of October, 1916, there was duly filed in the District Court of the United States for the District of Oregon, an indictment, in words and figures, as follows, to wit: [5]

In the District Court of the United States for the  
District of Oregon.

THE UNITED STATES OF AMERICA

vs.

S. H. COWELL, W. H. GEORGE, F. G. DRUM,  
R. B. HENDERSON, FRANK W. ERLIN,  
WILLIAM G. HENSHAW, TYLER HEN-  
SHAW, GEORGE T. CAMERON, FRED H.  
MUHS, JOHN C. EDEN, A. A. SUTHER-  
LAND, A. F. COATS, ALEXANDER  
BAILLIE, W. P. CAMERON, R. P.  
BUTCHART and CLARK M. MOORE,  
Defendants.

**Indictment for Violation of Sections One and Two  
of the Act of Congress Approved July 2, 1890  
(Anti-trust Law).**

United States of America,  
District of Oregon,—ss.

The grand jurors of the United States of Amer-  
ica for the District of Oregon, duly impaneled,  
sworn, and charged to inquire within and for said  
district, upon their oaths and affirmations do find,  
charge, allege, and present:

**COUNT ONE.**

That during the ten years last past Portland  
cement has been manufactured at divers places in  
the state of California and west of the Cascade  
Mountain range in the states of Washington and  
Oregon, and put upon the market in large quan-  
tities in those localities; that such cement has been



and is a useful and necessary article of merchandise greatly in demand for the construction, among other things, of buildings, wharves, docks, bridges, pipe-lines, sewers, retaining walls, dams and pavements; that during said ten years divers concerns, in the manner and under the circumstances in this indictment hereafter set forth, have engaged in such manufacture and in such sale of such cement directly and indirectly to consumers; that a list of the names of such [6] of said concerns as are known to said grand jurors, showing their respective places of manufacture, so far as known to said grand jurors, is as follows, to wit:

Cowell Portland Cement Company, Cowell,  
California;

Pacific Portland Cement Company, Consolidated, Cement, California;

Standard Portland Cement Corporation, Napa Junction, California;

Santa Cruz Portland Cement Company, Davenport, California;

(hereinafter in this indictment referred to as the Northern California companies):

Riverside Portland Cement Company, Riverside, California;

(hereafter in this indictment referred to as the Southern California company);

Olympic Portland Cement Company, Bellingham, Washington;

Superior Portland Cement Company, Concrete, Washington;

Washington Portland Cement Company, Concrete, Washington;

(hereafter in this indictment referred to as the Washington company):

Oregon Portland Cement Company, Oswego, Oregon;

(hereafter in this indictment referred to as the Oregon company); that practically all of such cement consumed in said localities during the time aforesaid has been manufactured by said concerns; that said concerns, during said ten years, except as hereinafter shown, have respectively sold large portions of the cement so manufactured by them to consumers of, and dealers in, such cement, whose several places of consumption and business have been situated in others of said states than the one wherein said cement was so manufactured by said concerns respectively, and consigned other large portions thereof to such dealers and to their own agents in such other states for sale there by such dealers and agents; that in pursuance of such sales and upon such consignments [7] said concerns respectively have been continually shipping said cement to such consumers, dealers, and agents in such other states—the number of such consumers, dealers, and agents being so great, as said grand jurors, upon their said oaths, charge the fact to be, that it is impracticable if not impossible to set forth the names thereof in this indictment; that in and by so manufacturing, selling, consigning and shipping such cement into other states than the state of the manufacture thereof, each of

said concerns, throughout said ten years, has been engaged in trade and commerce among the several states of the United States within the meaning of the act of Congress approved July 2, 1890, and entitled "An Act to protect trade and commerce against unlawful restraints and monopolies."

And the grand jurors aforesaid, upon their oaths aforesaid, do further present, that each of said concerns, since the first day of August, 1914, has had one or more persons for its principal officer and agent, or officers and agents, hereinafter referred to together as defendants, who have been actively engaged, at said places of manufacture, in the management, direction, and control of the business and affairs of the concerns with which they were so severally connected; and that a list of the names of such of said persons as are known to said grand jurors, showing, so far as known to said grand jurors, the character of their several offices and agencies (Christian names unknown to said grand jurors being indicated by initials), is as follows, that is to say:

- S. H. Cowell, President of the aforesaid Cowell Portland Cement Company;
- W. H. George, Secretary of the aforesaid Cowell Portland Cement Company;
- F. G. Drum, President of the aforesaid, Pacific Portland Cement Company, Consolidated;
- R. B. Henderson, Treasurer and General Manager of the aforesaid Pacific Portland Cement Company, Consolidated;

Frank W. Erlin, Secretary and Sales Manager of the [8] aforesaid Pacific Portland Cement Company, Consolidated;

William G. Henshaw, President of the aforesaid Riverside Portland Cement Company;

Tyler Henshaw, Vice-President and General Manager of the aforesaid Riverside Portland Cement Company;

George T. Cameron, President of the aforesaid Santa Cruz Portland Cement Company, and Standard Portland Cement Corporation;

Fred H. Muhs, Manager of the aforesaid Santa Cruz Portland Cement Company, and Standard Portland Cement Corporation;

John C. Eden, President of the aforesaid Superior Portland Cement Company;

A. A. Sutherland, Treasurer and Sales Manager of the aforesaid Superior Portland Cement Company;

A. F. Coats, President of the aforesaid Washington Portland Cement Company;

Alexander Baillie, Resident Agent of the aforesaid Olympic Portland Cement Company;

W. P. Cameron, General Manager and Sales Agent of the aforesaid Olympic Portland Cement Company;

R. P. Butchart, President of the aforesaid Oregon Portland Cement Company;

Clark M. Moore, General Sales Manager of the aforesaid Oregon Portland Cement Company;

And the grand jurors aforesaid, upon their oaths aforesaid, do further present, that continuously and

at all times during the period of time from said first day of August, 1914, to the day of the finding and presentation of this indictment, said defendants, each then well knowing all the premises in this indictment aforesaid, unlawfully and knowingly have engaged in a combination in undue, unreasonable, direct, and oppressive restraint of said interstate trade and commerce, which so as aforesaid has been carried on by said several concerns above named of which they the said defendants were officers and agents as above set forth; that is to say, a combination, now here described, in restraint of, and which throughout said period of time has in fact restrained, said trade and commerce in the manner now here set forth.

Said defendants, so being in the active management, direction, and control of the business and affairs of said concerns as aforesaid, in their said several capacities [9] as officers and agents of those concerns, throughout said last-mentioned period of time, unlawfully and knowingly have by concerted action carried on and conducted said business of said concerns without any competition as to the localities in said States of Washington, Oregon, and California in which they respectively sold said cement, except as to said portion of said state of Oregon west of said Cascade Mountain range to the extent hereinafter indicated, and without any competition as to the prices at which they would respectively sell such cement in said State of Oregon west of said Cascade Mountain range as



hereinafter specified, and unlawfully and knowingly have by concerted action prevented said Southern California company from selling or consigning for sale its cement either in Washington or Oregon; said northern California companies from selling or consigning for sale their cement in Washington; said Washington companies from selling or consigning for sale their cement either in Oregon or California; and said Oregon company from selling or consignment for sale its cement either in Washington or California; and unlawfully and knowingly have by concerted action prevented said northern California companies and said Oregon company from selling or consigning for sale their cement in Oregon otherwise than upon arbitrary and non-competitive prices, fixed and agreed upon between them in advance of such sales and consignments for sale; and in consequence of said unlawful conduct on the part of said defendants, and because of the want of competition in the particulars aforesaid between said concerns, all consumers of such cement in said localities in said States of Oregon, Washington, and California have been deprived of the benefits of competition as to the particulars aforesaid between said concerns so manufacturing and furnishing the same as aforesaid, and have been [10] compelled to pay for such cement arbitrary prices, and prices greatly in excess of the prices at which they would have secured such cement if said defendants had not engaged in

said unlawful combination in restraint of such trade and commerce as aforesaid.

And so the grand jurors aforesaid, upon their oaths aforesaid, do say, that said S. H. Cowell, W. H. George, F. G. Drum, R. B. Henderson, Frank W. Erlin, William G. Henshaw, Tyler Henshaw, George T. Cameron, Fred H. Muhs, John C. Eden, A. A. Sutherland, A. F. Coats, Alexander Baillie, W. P. Cameron, R. P. Butchart, and Clark M. Moore, defendants as aforesaid, during the period of time from the first day of August, 1914, to the day of the finding and presentation of this indictment, in said district of Oregon, and within the jurisdiction of this court, in manner and form and by the means and methods aforesaid, unlawfully and knowingly have engaged in a combination in restraint of trade and commerce among the several states; against the peace and dignity of the United States, and contrary to the form of statute of the same in such case made and provided.

#### COUNT TWO.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present, that said S. H. Cowell, W. H. George, F. G. Drum, R. B. Henderson, Frank W. Erlin, William G. Henshaw, Tyler Henshaw, George T. Cameron, Fred H. Muhs, John C. Eden, A. A. Sutherland, A. F. Coats, Alexander Baillie, W. P. Cameron, R. P. Butchart, and Clark M. Moore, defendants, during the period of time from the first day of August, 1914, to the day of

the finding and presentation of this indictment, so then being officers and agents respectively of the several concerns mentioned in the first count of this indictment as being manufacturers of and dealers in Portland cement, and so then having the [11] active management, direction, and control of the business and affairs of said concerns as in said first count set forth, in and by engaging, during said period of time, in the unlawful combination in restraint of the trade and commerce of said concerns in said first count described, and in and by knowingly carrying on the business of said concerns in the manner in said first count specified, the allegations of which said first count concerning all the matters aforesaid being, by reference, incorporated into this count as fully as if they were here repeated, unlawfully have, in the District of Oregon, and within the jurisdiction of this court, monopolized said trade, and commerce, it being a part of the trade and commerce among the several states: against the peace and dignity of the United States, and contrary to the form of statute of the same in such case made and provided.

Dated at Portland, Oregon, this — day of —, 1916.

A True Bill.

DAN. J. MOORE,  
Foreman, United States Grand Jury.  
BARNETT H. GOLDSTEIN,  
Assistant United States Attorney.



[Endorsed]: A True Bill. Dan J. Moore, Foreman, Grand Jury; Barnett H. Goldstein, Asst. U. S. Attorney. Filed October 27, 1916, in Open Court. G. H. Marsh, Clerk. [12]

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AND AFTERWARDS, to wit, on the 2d day of February, 1917, there was duly filed in said Court a demurrer to R. P. Butchart and Clark M. Moore to indictment, in words and figures as follows, to wit: [13]

In the District Court of the United States for the District of Oregon.

THE UNITED STATES OF AMERICA

vs.

S. H. COWELL, W. H. GEORGE, F. G. DRUM,  
R. B. HENDERSON, FRANK W. ERLIN,  
WILLIAM G. HENSHAW, GEORGE T.  
CAMERON, FRED H. MUHS, JOHN C.  
EDEN, A. A. SUTHERLAND, A. F.  
COATS, ALEXANDER BAILLIE, W. B.  
CAMERON, R. P. BUTCHART, CLARK  
M. MOORE,

Defendants.

**Demurrer of Defendants R. P. Butchart and Clark  
M. Moore.**

Now come the defendant R. P. Butchart and Clark M. Moore and demur to count one of the indictment herein and specify the following as their grounds of demurrer to said count one:

1. The matters and things set forth and charged in said count one do not constitute an offense under or against the laws or any law of the United States.

2. The averments of said count one are too general, vague, indefinite, and uncertain to inform the said defendants, or either of them, of the nature or cause of the accusations against them or either of them, or to apprise them, or either of them, with such reasonable certainty of the offense, or offenses, with which they, or either of them, are charged, or which they, or either of them, may expect to meet on the trial, as to enable them, or either of them, to make their defense.

3. The said count one does not contain a description of, or set forth, or show, any combination in restraint of trade and commerce.

And the said defendants demur to count two of said indictment and specify the following as their grounds of demurrer to said count two. [14]

1. The matters and things set forth and charged in said count two do not constitute an offense under or against the laws or any law of the United States.

2. The averments of said count two are too general, vague, indefinite, and uncertain to inform the said defendants, or either of them, of the nature and cause of the accusations against them or either of them, or to apprise them, or either of them, with such reasonable certainty of the offense, or offenses, with which they, or either of them, are charged, or which they, or either of them, may expect to meet on the trial, as to enable them or either of them to make their defense.

3. The said count two does not contain a description of or set forth or show any combination to monopolize the trade and commerce, or any part of the trade and commerce, among the several states of the United States.

4. The said count two does not state facts sufficient to charge or show that the said defendants, or either of them, have monopolized the trade and commerce, or any part of the trade and commerce, among the several states of the United States.

TEAL, MINOR & WINFRED,  
Attorneys for Defendants R. P. Butchart and Clark  
M. Moore.

Service of the within demurrer and receipt of a copy is hereby admitted this —— day of February, 1917.

CLARENCE L. REAMES,  
Of Attorneys for Plaintiff.

Filed February 2, 1917. G. H. Marsh, Clerk.  
[15]

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AND AFTERWARDS, to wit on Monday, the 30th day of April, 1917, the same being the 49th judicial day of the regular March term of said court—Present, the Honorable CHARLES E. WOLVERTON, United States District Judge, presiding—the following proceedings were had in said cause, to wit: [16]

In the District Court of the United States for the  
District of Oregon.

No. 7308.

UNITED STATES OF AMERICA

vs.

S. H. COWELL, W. H. GEORGE, F. G. DRUM,  
R. B. HENDERSON, FRANK W. ERLIN,  
WILLIAM G. HENSHAW, TYLER HEN-  
SHAW, GEORGE T. CAMERON, FRED  
H. MUHS, JOHN C. EDEN, A. A. SUTH-  
ERLAND, A. F. COATS, ALEXANDER  
BAILLIE, W. P. CAMERON, R. P. BUR-  
CHART, and CLARK M. MOORE,  
Defendants.

### **Judgment.**

Now at this time, this matter coming on to be heard, the plaintiff appearing by Clarence L. Reames, United States Attorney for the District of Oregon, the defendants S. H. Cowell, W. H. George, F. G. Drum, R. B. Henderson, Frank W. Erlin, William G. Henshaw, and Tyler Henshaw, appearing by their attorney Pillsbury, Madison and Sutro; and the defendants George T. Cameron and Fred H. Muhs appearing by their attorneys Morrison, Dunne and Brobeck, and it appearing to the Court from the statements made in open court by the said counsel that the defendant S. H. Cowell is the president of the Cowell Portland Cement Company; the defendant W. H. George is the secretary of the

Crowell Portland Cement Company; the defendant F. G. Drum is the president of the Pacific Portland Cement Company, Consolidated; the defendant R. B. Henderson is the treasurer and general manager of the Pacific Portland Cement Company, Consolidated; the defendant Frank W. Erlin is the secretary and sales manager of the Pacific Portland Cement Company, Consolidated; the defendants William G. Henshaw and Tyler Henshaw, respectively, are the president and vice-president of the Riverside Portland Cement Company; the defendants George T. Cameron and Fred Muhs respectively, [17] are the president and general manager of the Santa Cruz Portland Cement Company and the Standard Portland Cement Company.

The Government now moves the Court for an order permitting the defendant W. H. George to enter herein a plea of guilty for and on behalf of the Cowell Portland Cement Company; the defendant F. G. Drum to enter a plea of guilty for and on behalf of the Pacific Portland Cement Company, Consolidated; the defendant William G. Henshaw to enter a plea of guilty for and on behalf of the Riverside Portland Cement Company, and the defendant George T. Cameron to enter a plea of guilty for and on behalf of the Santa Cruz Portland Cement Company, and the Standard Portland Cement Corporation, and that upon the entry of said pleas, the indictment herein, so far as it pertains to the defendants W. H. Cowell, R. B. Henderson, Frank W. Erlin, Tyler Henshaw, and Fred H. Muhs, be dismissed;



And all of the said defendants through their said respective counsel, having at this time asked the Court in open court to comply with said request and make said order, and the Court now being fully advised in the premises and it appearing that this is a case in which the said defendants, as said respective officers, ought to be permitted by this Court to enter said pleas for and on behalf of said corporations,

IT IS CONSIDERED, ORDERED, AND ADJUDGED by the Court that the said defendants W. H. George, F. G. Drum, William G. Henshaw, and George T. Cameron, be permitted by the Court and allowed to withdraw the demurrers heretofore interposed by them and to enter their pleas as aforesaid to the indictment returned and filed in this court on the 27th day of October, 1916; [18]

WHEREUPON, in open court, the said respective defendants W. H. George, F. G. Drum, William G. Henshaw, and George T. Cameron, by and through their respective counsel and for and on behalf of said respective corporations, hereby formally enter pleas of guilty to said indictment;

WHEREUPON IT IS ORDERED, CONSIDERED, and ADJUDGED by the Court that said pleas be accepted and entered of record; that the defendants W. H. George, F. G. Drum, William G. Henshaw, and George T. Cameron, for and on behalf of said respective corporations each pay a fine herein in the sum of \$2500 without costs; that the indictment herein as to the defendants S. H. Cowell, R. B. Henderson, Frank W. Erlin, Tyler Henshaw,



and Fred H. Muhs, be and the same hereby is dismissed.

Done in open court this 30th day of April, 1917.

CHAS. E. WOLVERTON,

Judge.

Filed April 30, 1917. G. H. Marsh, Clerk. [19]

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AND AFTERWARDS, to wit, on Monday, the 16th day of July, 1917, the same being the 12th judicial day of the regular July term of said court—Present, the Honorable CHARLES E. WOLVERTON, United States District Judge, presiding—the following proceedings were had in said cause, to wit: [20]

In the District Court of the United States for the District of Oregon.

No. 7308.

July 16, 1917.

Indictment: Sections 1 and 2, Act July 2, 1890.

THE UNITED STATES OF AMERICA

vs.

S. H. COWELL, W. H. GEORGE, F. G. DRUM, R. B. HENDERSON, FRANK W. ERLIN, WILLIAM G. HENSHAW, TYLER HENSHAW, GEORGE T. CAMERON, FRED H. MUHS, J. C. EDEN, A. A. SUTHERLAND, A. F. COATS, ALEXANDER BAILLIE, W. P. CAMERON, R. P. BUTCHART, CLARK M. MOORE.

**Order Overruling Demurrer.**

This cause was submitted to the Court upon the demurrers of the several defendants on file herein upon written briefs. On consideration whereof, it is ORDERED that said demurrers be and the same are hereby overruled. [21]

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AND AFTERWARDS, to wit, on the 16th day of July, 1917, there was duly filed in said court, an opinion on the demurrers to indictment, in words and figures as follows, to wit: [22]

In the District Court of the United States for the  
District of Oregon.

UNITED STATES OF AMERICA

vs.

S. H. COWELL, W. H. GEORGE, F. G. DRUM,  
R. B. HENDERSON, FRANK W. ERLIN,  
WILLIAM G. HENSHAW, TYLER HEN-  
SHAW, GEORGE T. CAMERON, FRED H.  
MUHS, JOHN C. EDEN, A. A. SUTHER-  
LAND, A. F. COATS, ALEXANDER BAIL-  
LIE, W. P. CAMERON, R. P. BUTCHART,  
and CLARK M, MOORE,

Defendants.

**Opinion on Demurrers to Indictment.**

CLARENCE L. REAMES, United States Attorney,  
BARNETT H. GOLDSTEIN, Assistant U. S.  
Attorney, FREDERICK BAUSMAN and  
VEAZIE, McCOURT & VEAZIE, for Eden,  
Sutherland, Coats, Baillie, and Cameron.

TEAL, MINOR & WINFREE, for Butchart and  
Moore.

WOLVERTON, District Judge:

The indictment herein charges that the defendants, during the period between August 1, 1914, and the finding of the indictment knowingly and unlawfully engaged in a combination in restraint of trade and commerce among the several states, and by a second count that during the same time they engaged in a monopoly in like restraint of trade.

The defendants are officers in some capacity, in control to a greater or less extent, of certain corporations and companies engaged in the manufacture of cement and in the traffic and sale of the products in states other than where manufactured as well as in their own states. The companies are classified as the Northern California Companies, the Southern California Company, the Washington Companies, and the Oregon Company.

A demurrer has been interposed to the indictment, by which three questions are presented, namely, that defendants are not advised of the time, place, or circumstances upon [23] which the Government relies for conviction; that the offense with which

it is sought to charge the defendants is not so stated as to afford them, after conviction or acquittal, protection against a second indictment for the same offense; and that the Court is not able to determine from the indictment whether a combination existed, or any of the defendants engaged therein, or whether the restraint referred to was undue or unreasonable.

First, as it relates to the time charged as to when the offense was committed: The parties were engaged from August 1, 1914, until the finding of the indictment, and by nature the act was continuing in its operation. In a case under this statute, it is unnecessary to set out any overt act. Simply the combination or contract in any form in restraint of trade between the states or with foreign nations constitutes the offense, and it is only essential to charge the combination or contract. *Nash vs. United States*, 229 U. S. 373; *United States vs. Rintelen*, 233 Fed. 793.

The combination is not a thing of the instant the minds of the agreeing parties have come to a completed understanding, either express or implied. The purpose thereof is an essential element as well, and this may contemplate that its operation shall extend over a period of time. While the parties are engaged in the operation of the design, or in carrying the same into effect, they are transgressing the statute, they are still agreeing to the unlawful offense, and still cohering in the thing that the law condemns. Thus the offense becomes a continuing one, and it is only necessary to allege that the par-

ties were engaged in the unlawful combination or contract between specified dates. By such allegation, the offenders are apprised of the time of their transgression. *United States vs. MacAndrews & Forbes Co.*, 149 Fed. 823. [24]

The next question involves the nature of the offense. This has been settled by the Supreme Court. The statute has been construed to be very broad, and not only this, but very comprehensive. It comprises, says the Court in *Standard Oil Co. vs. United States*, 221 U. S. 1, 59,

“All contracts or acts which theoretically were attempts to monopolize, yet which in practice had come to be considered as in restraint of trade in a broad sense.” And, further, it evinces “the intent not to restrain the right to make and enforce contracts, whether resulting from combination or otherwise, which did not unduly restrain interstate or foreign commerce, but to protect that commerce from being restrained by methods, whether old or new, which would constitute an interference that is an undue restraint.” And,

“It was intended that the standard of reason which had been applied at the common law and in this country in dealing with subjects of the character embraced by the statute, was intended to be the measure used for the purpose of determining whether in a given case a particular act had or had not brought about the wrong against which the statute provided.”



There has since been no digression from this holding, and it is unnecessary to cite the succeeding authorities. Of course, I realize and recognize the authority of the *United States vs. Cruickshank*, et al., 92 U. S. 542. It is essential in a case like this to descend to particulars, and not to rely simply on the words of the statute in pleading. *United States vs. Hess*, 124 U. S. 483.

Turning to the indictment we find various corporations or companies, located in different states, manufacturing Portland cement for the general trade, and engaged in interstate commerce. The companies are represented by certain officers and managers, who promote and carry on their business, being the defendants under indictment. These persons have knowingly by concerted action, carried on the business of the several concerns named, without competition as to prices in the several states in which they are engaged in the manufacture of their cement, and by the same concerted action have [25] prevented the Southern California Company from selling or consigning for sale in either Washington or Oregon, and the Northern California Companies from selling or consigning for sale in Washington, the Washington companies from doing the same as it respects Oregon and California, and the Oregon companies as to Washington and California, and have prevented the Northern California and Oregon Companies from selling or consigning for sale in Oregon otherwise than upon arbitrary and noncompetitive prices, fixed and agreed upon in advance. And it is further stated that, by reason



thereof, consumers have been compelled to pay for such cement arbitrary prices greatly in excess of prices at which they would have secured such cement if it were not for the combination.

This, to my mind, states quite clearly the scheme and purpose of the combination. It descends to particulars, and no one need be misled into preparing his defense for something other than as alleged against him. The court knows what the charge is without the liability of misconception or mistake, and the defendants need not fear that another prosecution can follow after trial upon this indictment.

Apply the standard of reason, which counsel insist that we shall, and then inquire further whether there is an undue restraint of trade or commerce. The indictment does allege that, by reason of these things, the defendants were engaged in undue and unreasonable restraint of trade. We may put this to one side as a conclusion. There is sufficient alleged, however, from which to deduce this very conclusion. The concert of action which implies a combination for marketing their cement in particular locations, and the direct agreement between them for fixing arbitrary and noncompetitive prices for the sale of cement in Oregon, is sufficient to stamp their demeanor as in restraint of interstate trade and commerce. [26] Such a combination is without the elements or *indicia* of a wholesome agreement, and cannot be so characterized. The following cases are illustrative:

Standard Sanitary Mfg. Co. vs. United States, 226 U. S. 20; Eastern States Lumber Assn. vs. United States, 234 U. S. 600.

The third objection is answered by the foregoing.

The same reasoning applies to the objections to the second count.

The objection that no venue is laid is without merit.

Demurrer overruled.

Filed, July 16, 1917. G. H. Marsh, Clerk. [27]

AND AFTERWARDS, to wit, on Monday, the 10th day of December, 1917, the same being the 31st judicial day of the regular November term of said Court—Present, the Honorable CHARLES E. WOLVERTON, United States District Judge, presiding—the following proceedings were had in said cause, to wit: [28]

In the District Court of the United States for the District of Oregon.

No. 7398.

UNITED STATES OF AMERICA

vs.

S. H. COWELL, W. H. GEORGE, F. G. DRUM,  
R. B. HENDERSON, FRANK W. ERLIN,  
WILLIAM G. HENSHAW, TYLER HEN-  
SHAW, GEORGE T. CAMERON, FRED H.  
MUHS, JOHN C. EDEN, A. A. SUTHER-  
LAND, A. F. COATS, ALEXANDER BAIL-  
LIE, W. P. CAMERON, R. P. BUTCHART,  
and CLARK M. MOORE,

Defendants.

**Judgment.**

Now at this time this matter coming on to be heard, the plaintiff appearing by Clarence L. Reames, United States Attorney for the district of Oregon, the defendants John C. Eden, A. A. Sutherland, A. F. Coats, Alexander Baillie, and W. P. Cameron appearing by their attorney John McCourt, and it appearing to the Court from the statements made in open court by the said counsel, that the defendant John C. Eden is the president of the Superior Portland Cement, that A. A. Sutherland is the treasurer and sales manager of the Superior Portland Cement Company, that A. F. Coats is the president of the Washington Portland Cement Company, that Alexander Baillie is the resident agent of the Olympia Portland Cement Company, and that W. P. Cameron is the general manager and sales agent of the Olympic Portland Cement Company;

The government now moves the Court for an order permitting the defendant John C. Eden to enter a plea of guilty for and on behalf of the aforesaid Superior Portland Cement Company; the defendant A. F. Coats [29] to enter a plea of guilty for and on behalf of the aforesaid Washington Portland Cement Company, and the defendant W. P. Cameron to enter a plea of guilty for and on behalf of the aforesaid Olympic Portland Cement Company, and that upon the entry of said pleas the indictment herein so far as it pertains to

the defendants A. A. Sutherland and Alexander Baillie be dismissed;

And all of said defendants, through their said respective counsel having at this time asked the Court in open court to comply with the said request and to make said order, and the Court now being fully advised in the premises, and it appearing that this is a case in which the said defendants as said respective officers ought to be permitted by the Court to enter said pleas for and on behalf of said respective corporations;

IT IS ORDERED, CONSIDERED, and ADJUDGED by the Court that the said defendants John C. Eden, A. F. Coats, and W. P. Cameron be permitted by the Court and allowed to enter their pleas as aforesaid, to the indictment returned and filed in this court on October 27th, 1916;

Whereupon, in open court, the said respective defendants John C. Eden, A. F. Coats, and W. P. Cameron, by and through their respective counsel and for and on behalf of said respective corporations, hereby and herein formally enter pleas of guilty to said indictment;

Whereupon, it is ORDERED, CONSIDERED, and ADJUDGED by the Court that said pleas be accepted and entered of record; that the said defendants John C. Eden, A. F. Coats, and W. P. Cameron, for and on behalf of said respective corporations each pay a fine of twenty-five hundred dollars (\$2500.00) without costs; that the indictment herein, as [30] to the defendants A. A.

Sutherland and Alexander Baillie be and the same hereby is dismissed.

Dated at Portland, Oregon, this 10th day of December, 1917.

CHAS. E. WOLVERTON,  
Judge, United States District Court.

Filed December 10, 1917. G. H. Marsh, Clerk.  
[31]

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AND AFTERWARDS, to wit, on Monday, the 10th day of December, 1917, the same being the 31st Judicial day of the regular November term of said Court—Present, the Honorable CHARLES E. WOLVERTON, United States District Judge, presiding—the following proceedings were had in said cause, to wit: [32]

In the District Court of the United States for the District of Oregon.

No. 7308.

December 10, 1917.

Indictment: Section 37 P. C.

UNITED STATES OF AMERICA

vs.

S. H. COWELL, R. P. BUTCHART, CLARK M.  
MOORE, et al.,

Defendants.

**Order Fixing Time of Trial.**

Now at this day comes the plaintiff by Mr. Clarence L. Reames, United States Attorney, and

the defendants R. P. Butchart and Clark M. Moore, by Mr. Wirt Minor, of counsel. Whereupon said defendants R. P. Butchart and Clark M. Moore for plea to said indictment each through his said attorney says he is not guilty. Whereupon upon motion of said plaintiff it is ORDERED that this cause be and the same is hereby set for trial as to said defendants R. P. Butchart and Clark M. Moore for Tuesday, March 5, 1918. [33]

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AND AFTERWARDS, to wit, on the 23d day of December, 1920, there was duly filed in said Court, a verdict, in words and figures as follows, to wit: [34]

In the District Court of the United States for the District of Oregon.

THE UNITED STATES OF AMERICA

vs.

S. H. COWELL, W. H. GEORGE, F. G. DRUM,  
R. B. HENDERSON, FRANK W. ERLIN,  
WILLIAM G. HENSHAW, TYLER HENSHAW,  
GEORGE T. CAMERON, FRED H. MUHS,  
J. C. EDEN, A. A. SUTHERLAND,  
A. F. COATS, ALEXANDER BAILLIE,  
W. P. CAMERON, R. P. BUTCHART,  
and CLARK M. MOORE.

Defendants.

**Verdict.**

We, the jury duly empaneled and sworn to try the above-entitled cause, find the defendant R. P.



Butchart guilty as charged in count one of the indictment and guilty as charged in count two of the indictment; and we find the defendant Clark M. Moore guilty as charged in count one of the indictment and guilty as charged in count two of the indictment.

Dated at Portland, Oregon, this 22d day of December, 1920.

I. H. COPELAND,

Foreman.

We, the jury, hereby recommend leniency to the court.

I. H. COPELAND,

Foreman.

Filed December 23, 1920. G. H. Marsh, Clerk.  
[35]

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AND AFTERWARDS, to wit, on Tuesday, the 18th day of January, 1921, the same being the 66th judicial day of the regular November term of said Court—Present, the Honorable ROBERT S. BEAN, United States District Judge, presiding—the following proceedings were had in said cause, to wit: [36]

In the District Court of the United States for the  
District of Oregon.

No. 7308.

THE UNITED STATES OF AMERICA

vs.

S. H. COWELL, W. H. GEORGE, F. G. DRUM,  
R. B. HENDERSON, FRANK W. ERLIN,  
WILLIAM G. HENSHAW, TYLER HEN-  
SHAW, GEORGE T. CAMERON, FRED  
H. MUHS, J. C. EDEN, A. A. SUTHER-  
LAND, A. F. COATS, ALEXANDER  
BAILLIE, W. P. CAMERON, R. P. BUT-  
CHART, and CLARK M. MOORE,

Defendants.

**Order Allowing Time to File Motion for New Trial  
and to Submit Bill of Exceptions.**

On this day, the defendants R. B. Butchart and Clark M. Moore, by their attorneys, make application to this Court for an order extending the time in which to prepare and submit a motion for a new trial and a bill of exceptions and for stay of judgment from the 22d day of January, 1921, to and including the first day of February, 1921, and upon good cause shown therefor, it is hereby CONSIDERED, ORDERED, and ADJUDGED that the said defendants do have until and including the first day of February, 1921, in which to prepare and submit a motion for a new trial and a bill of exceptions in this cause, and that judgment be stayed in this cause until said date.

Dated this 18th day of January, 1921.

R. S. BEAN,  
District Judge.

Filed January 18, 1921. G. H. Marsh, Clerk.  
[37]

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AND AFTERWARDS, to wit, on the 31st day of January, 1921, there was duly filed in said Court a motion of defendant R. P. Butchart for a new trial, in words and figures as follows, to wit: [38]

In the District Court of the United States for the  
District of Oregon.

UNITED STATES OF AMERICA,  
Plaintiff,

vs.

R. P. BUTCHART and CLARK M. MOORE,  
Defendants.

**Motion and Petition for New Trial.**

To the Honorable Judges of the Above-entitled  
Court:

Comes now R. P. Butchart, one of the defendants in the above-entitled cause, and moves and petitions the above-entitled court to set aside the verdict in this cause rendered against him and to grant to him, the said defendant, a new trial upon the ground and for the reasons following, that is to say:

**I.**

That the Court erred in stating the law.

## II.

That the verdict of the jury has no evidence to sustain it.

## III.

That the great preponderance of the evidence is against the verdict of the jury.

## IV.

That the verdict of the jury is due to passion, prejudice, or partisan feeling.

With this, his motion, the said defendant R. P. Butchart presents a brief in which the several errors complained of are particularly set forth and in which he undertakes to show that the verdict of the jury has no evidence to sustain it, and that the great preponderance of the evidence is against the verdict, and that the verdict is due to passion, prejudice, or partisan feeling; and also [39] presents herewith a transcript of the evidence excepting the exhibits, and an abstract of all exhibits; and prays that his said brief and the said evidence and abstract of exhibits be considered and weighed by your Honors in support and as a part of his said motion and petition.

Dated this 31st day of January, 1921.

TEAL, MINOR & WINFREE,

Attorneys for the Defendant, R. P. Butchart.

United States of America,  
State and District of Oregon,—ss.

I, Wirt Minor, do hereby certify that I am one of the attorneys for the defendant R. P. Butchart in the above-entitled cause, and that the foregoing

motion and petition is in my judgment well founded in law.

**WIRT MINOR.**

Service of the within motion and petition and receipt of a copy is hereby admitted this 31st day of January, 1921.

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For United States of America.

Filed January 31, 1921. G. H. Marsh, Clerk.  
[40]

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AND AFTERWARDS, to wit, on the 31st day of January, 1921, there was duly filed in said court a motion of defendant Clark M. Moore for a new trial, in words and figures as follows, to wit:  
[41]

In the District Court of the United States for the  
District of Oregon.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

R. P. BUTCHART and CLARK M. MOORE,  
Defendants.

**Motion and Petition for New Trial.**

To the Honorable Judges of the Above-entitled Court:

Comes now Clark M. Moore, one of the defendants in the above-entitled cause, and moves and petitions the above-entitled court to set aside the verdict in this cause rendered against him and to grant to him,

the said defendant, a new trial upon the ground and for the reasons following, that is to say:

I.

That the Court erred in stating the law.

II.

That the verdict of the jury has no evidence to sustain it.

III.

That the great preponderance of the evidence is against the verdict of the jury.

IV.

That the verdict of the jury is due to passion, prejudice and partisan feeling.

With this, his motion, the said defendant Clark M. Moore, presents a brief in which the several errors complained of are particularly set forth and in which he undertakes to show that the verdict of the jury has no evidence to sustain it, and that the great preponderance of the evidence is against the verdict, and that the verdict is due to passion, [42] prejudice or partisan feeling; and also presents herewith a transcript of the evidence excepting the exhibits, and an abstract of all exhibits; and prays that his said brief and the said evidence and abstract of exhibits be considered and weighed by your Honors in support and as a part of his said motion and petition.

Dated this 31st day of January, 1921.

TEAL, MINOR & WINFREE,

Attorneys for the Defendant, Clark M. Moore.



United States of America,  
State and District of Oregon,—ss.

I, Wirt Minor, do hereby certify that I am of the attorneys for the defendant Clark M. Moore in the above-entitled cause, and that the foregoing motion and petition is in my judgment well founded in law.

WIRT MINOR,

Filed January 31, 1921. G. H. Marsh, Clerk.  
[43]

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AND AFTERWARDS, to wit, on Monday, the 31st day of January, 1921, the same being the 77th judicial day of the regular November term of said court—Present, the Honorable ROBERT S. BEAN, United States District Judge, presiding—the following proceedings were had in said cause, to wit: [44]

In the District Court of the United States for the  
District of Oregon.

No. C—7308.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

R. P. BUTCHART and CLARK M. MOORE,

Defendants.

**Order Extending Time to March 1, 1921, to Prepare and File Bill of Exceptions.**

Application being made at this time to extend

the time in which to prepare and submit a bill of exceptions in the above-entitled cause and a motion for a new trial being at this time filed in this cause on behalf of the defendant R. P. Butchart and a similar motion on behalf of the defendant Clark M. Moore, and the Court being satisfied that it is in the interest of justice that the time be extended as applied for, it is hereby CONSIDERED, ORDERED, and ADJUDGED that each of the defendants, R. P. Butchart and Clark M. Moore, have until the first day of March, 1921, in which to prepare and submit a bill of exceptions in this cause, and the time in which to prepare said bill of exceptions be and the same is hereby extended until said date.

Dated this 31st day of January, 1921.

R. S. BEAN,  
District Judge.

Filed January 31, 1921. G. H. Marsh, Clerk.  
[45]

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AND AFTERWARDS, to wit, on the 12th day of February, 1921, there was duly filed in said Court, a stipulation for an order extending time to submit bill of exceptions, in words and figures as follows, to wit: [46]

In the District Court of the United States for the  
District of Oregon.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

R. P. BUTCHART and CLARK M. MOORE,

Defendants.

**Stipulation for Order Extending Time to Submit  
Bill of Exceptions.**

It is hereby stipulated by and between the United States of America and R. P. Butchart and Clark M. Moore, parties defendant, that the said R. P. Butchart and Clark M. Moore have, and each of them have, to and including the 30th day of April, 1921, in which to prepare and submit a bill of exceptions in the above-entitled cause.

Dated this 21st day of February, 1921.

LESTER W. HUMPHREYS,

Attorney for the United States of America.

TEAL, MINOR & WINFREE,

Attorneys for the Defendants R. P. Butchart and  
Clark M. Moore.

Filed February 21, 1921. G. H. Marsh, Clerk.

[47]

AND AFTERWARDS, to wit, on Monday, the 21st day of February, 1921, the same being the 95th judicial day of the regular November term of said Court—Present, the Honorable ROBERT S. BEAN, United States District Judge, presiding—the following proceedings were had in said cause, to wit: [48]

In the District Court of the United States for the  
District of Oregon.

No. 7308.

UNITED STATES OF AMERICA,  
Plaintiff,

vs.

R. P. BUTCHART and CLARK M. MOORE,  
Defendants.

**Order Extending Time to and Including April 30,  
1921, to Prepare and File Bill of Exceptions.**

The stipulation having been entered into between the United States of America and R. P. Butchart and Clark M. Moore, defendants in this cause, whereby said R. P. Butchart and Clark M. Moore shall have and that each of them shall have to and including the 30th day of April, 1921, in which to prepare and submit a bill of exceptions in this cause; it is therefore **CONSIDERED, ORDERED, and ADJUDGED** that the time in which to prepare and file a bill of exceptions in this cause be and the same hereby is extended to and including the 30th day of April, 1921.

Dated this 21st day of February, 1921.

R. S. BEAN,

Judge.

Filed February 21, 1921. G. H. Marsh, Clerk.  
[49]

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AND AFTERWARDS, to wit, on Monday, the 21st day of February, 1921, the same being the 95th judicial day of the regular November term of said Court—Present, the Honorable ROBERT S. BEAN, United States District Judge, presiding—the following proceedings were had in said cause, to wit: [50]

In the District Court of the United States for the District of Oregon.

No. C—7308.

February 21, 1921.

Indictment: Sections 1 and 2, Act July 2, 1890.

THE UNITED STATES OF AMERICA

vs.

S. H. COWELL, R. P. BUTCHART and CLARK  
M. MOORE.

**Order Denying Motion for New Trial.**

This cause was heard by the Court upon the motion of defendants R. P. Butchart and Clark M. Moore for a new trial and to set aside the verdict herein, plaintiff appearing by Mr. Lester W. Humphreys, United States Attorney, and Mr. Hall S. Lusk, Assistant United States Attorney, and

the defendants R. P. Butchart and Clark M. Moore by Mr. Wirt Minor and Mr. A. B. Winfree, of counsel. Upon consideration whereof, it is ordered that said motion be and the same is hereby denied. [51]

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AND AFTERWARDS, to wit, on Wednesday, the 23d day of February, 1921, the same being the 97th judicial day of the regular November term of said Court—Present, the Honorable ROBERT S. BEAN, United States District Judge, presiding—the following proceedings were had in said cause, to wit: [52]

In the District Court of the United States for the  
District of Oregon.

No. 7308.

February 23, 1921.

Indictment: Act July 2, 1890.

THE UNITED STATES OF AMERICA

vs.

S. H. COWELL, R. P. BUTCHART and CLARK  
M. MOORE.

### **Sentence.**

Now at this day come the plaintiff by Mr. Lester W. Humphreys, United States Attorney, and the defendants R. P. Butchart and Clark M. Moore by Mr. Wirt Minor, of counsel. Whereupon, upon motion of plaintiff for judgment upon the verdict and recommendation of the jury heretofore returned herein, it is adjudged that said defendant



R. P. Butchart do pay a fine of \$5,000.00, and that said defendant Clark M. Moore do pay a fine of \$2,500.00, and that each of said defendants be committed to the county jail of Multnomah county, Oregon, until his said fine be paid or until he be discharged according to law. Whereupon, upon motion of the defendants, it is ordered that execution herein be and the same is hereby stayed pending the issuance of a writ of error to review said judgment. [53]

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AND AFTERWARDS, to wit, on the 3d day of May, 1921, there was duly filed in said court, a stipulation relative to bill of exceptions, in words and figures as follows, to wit: [54]

In the District Court of the United States for the District of Oregon.

UNITED STATES OF AMERICA,  
Plaintiff,

vs.

S. H. COWELL, W. H. GEORGE, F. G. DRUM,  
R. B. HENDERSON, FRANK W. ERLIN,  
WILLIAM G. HENSHAW, TYLER HENSHAW,  
GEORGE T. CAMERON, FRED H. MUHS,  
JOHN C. EDEN, A. A. SUTHERLAND,  
A. F. COATS, ALEXANDER BAILLIE,  
W. P. CAMERON, R. P. BUTCHART,  
and CLARK M. MOORE,  
Defendants.

**Stipulation Relative to Bill of Exceptions.**

It is hereby stipulated by and between the United States of America, acting by Lester W. Humphreys, its attorney, and R. P. Butchart and Clark M. Moore, defendants in the above-entitled cause and the only defendants on trial in said cause, acting by Wirt Minor, one of their attorneys:

1. That all exhibits offered and received in evidence upon the trial of the above-entitled cause be attached to and made a part of the bill of exceptions.

2. That all papers, writings, and printed matters offered in evidence but not received in evidence in said cause, or so many thereof as said Lester W. Humphreys or Wirt Minor may in writing designate to the Clerk of the above-entitled court, shall be attached to and made a part of the bill of exceptions.

3. That there be attached to and made a part of the bill of exceptions in said cause the abstract of exhibits offered and received in evidence upon the trial of said cause which abstract is attached hereto, identified by the signatures of Lester W. Humphreys and Wirt Minor.

4. That the exhibits attached to the bill of exceptions and other writings, papers, and printed matters attached to the bill of exceptions be not printed as a part of the transcript of record upon the writ of error except such parts thereof as may be designated in writing by the [55] said Humphreys or the said Minor, but in lieu thereof the

said abstract be printed as a part of said transcript of record.

Dated this 29th day of April, 1921.

LESTER W. HUMPHREYS.

WIRT MINOR.

Filed May 3, 1921. G. H. Marsh, Clerk. [56]

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AND AFTERWARDS, to wit, on Tuesday, the 3d day of May, 1921, the same being the 50th judicial day of the regular March term of said Court—Present, the Honorable ROBERT S. BEAN, United States District Judge, presiding—the following proceedings were had in said cause, to wit: [57]

In the District Court of the United States for the District of Oregon.

No. 7308.

THE UNITED STATES OF AMERICA,  
Plaintiff,

vs.

S. H. COWELL, W. H. GEORGE, F. G. DRUM,  
R. B. HENDERSON, FRANK W. ERLIN,  
WILLIAM G. HENSHAW, TYLER HENSHAW,  
GEORGE T. CAMERON, FRED H. MUHS,  
J. C. EDEN, A. A. SUTHERLAND,  
A. F. COATS, ALEXANDER BAILLIE, W. P. CAMERON,  
R. P. BUTCHART and  
CLARK M. MOORE,

Defendants.

**Order on Stipulation Relative to Bill of Exceptions.**

A stipulation having been entered into by and between the United States of America, acting by Lester W. Humphreys, its district attorney, and the defendants, R. P. Butchart and Clark M. Moore, acting through Wirt Minor, one of their attorneys; it is therefore and in pursuance of said stipulation ordered:

1. That all exhibits offered and received in evidence upon the trial of the above-entitled cause be attached to and made a part of the bill of exceptions.

2. That all papers, writings, and printed matter offered in evidence but not received in evidence in said cause, or so many thereof as the said Lester W. Humphreys or Wirt Minor may in writing designate to the Clerk of the above-entitled court shall be attached to and made a part of the bill of exceptions.

3. That there be attached to and made a part of the bill of exceptions of said cause the abstract of the exhibits offered and received in evidence upon the trial of said cause, which abstract is attached to the bill of exceptions as tendered and identified by the signatures of the said attorneys.

4. That the exhibits attached to the Bill of Exceptions and other writings, papers, and printed matters attached thereto be not printed as a part of the transcript of record upon the writ of error except in so far as and such parts thereof as may be designated in writing by the said attorneys [58] or either of them, and in lieu thereof the said ab-

stract be printed as a part of said transcript of record.

Dated this 3d day of May, 1921.

R. S. BEAN,  
District Judge.

Filed May 3, 1921. G. H. Marsh, Clerk. [59]

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AND AFTERWARDS, to wit, on Tuesday, the 3d day of May, 1921, the same being the 50th judicial day of the regular March term of said Court—Present, the Honorable ROBERT S. BEAN, United States District Judge, presiding—the following proceedings were had in said cause, to wit: [60]

In the District Court of the United States for the  
District of Oregon.

No. 7308.

May 3, 1921.

Indictment: Act July 2, 1890.

THE UNITED STATES OF AMERICA

vs.

S. H. COWELL et al.

**Order Extending Time to File Proposed Amendments to Bill of Exceptions.**

Now at this day, upon motion of Mr. Hall S. Lusk, Assistant United States attorney, it is ordered that he be and he is hereby allowed fifteen

days from this date to file proposed amendments to the bill of exceptions herein. [61]

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AND AFTERWARDS, to wit, on Monday, the 16th day of May, 1922, the same being the 61st judicial day of the regular March term of said Court—Present, the Honorable ROBERT S. BEAN, United States District Judge, presiding—the following proceedings were had in said cause, to wit: [62]

In the District Court of the United States for the District of Oregon.

No. C—7308.

May 16, 1921.

Indictment: Sections 1 and 2, Act of July 2, 1920.

THE UNITED STATES OF AMERICA

vs.

S. H. COWELL et al.

**Order Extending Time to June 1, 1921, to File  
Proposed Amendments to Bill of Exceptions.**

Now at this day upon motion of Mr. Lester W. Humphreys, United States attorney, it is ordered that said plaintiff be and he is hereby allowed to Wednesday, June 1, 1921, to propose amendments and enter objections to the bill of exceptions herein. [63]



AND AFTERWARDS, to wit, on Tuesday, the 31st day of May, 1921, the same being the 74th judicial day of the regular March term of said Court—Present, the Honorable ROBERT S. BEAN, United States District Judge, presiding—the following proceedings were had in said cause, to wit: [64]

In the District Court of the United States for the District of Oregon.

No. C—7308.

May 31, 1921.

Indictment: Sections 1 and 2, Act of July 2, 1920.

THE UNITED STATES OF AMERICA

vs.

S. H. COWELL, R. P. BUTCHART and CLARK  
M. MOORE.

**Order Extending Time to June 15, 1921, to File Proposed Amendments to Bill of Exceptions.**

Now at this day, upon motion of Mr. Lester W. Humphreys, United States attorney, it is ordered that defendants R. P. Butchart and Clark M. Moore be and they are hereby allowed to Wednesday, June 15, 1921, to propose amendments to their bill of exceptions herein. [65]

AND AFTERWARDS, to wit, on the 18th day of July, 1921, there was duly filed in said court a bill of exceptions, in words and figures as follows, to wit: [66]

In the District Court of the United States for the District of Oregon.

THE UNITED STATES OF AMERICA,  
Plaintiff,

vs.

S. H. COWELL, W. H. GEORGE, F. G. DRUM,  
R. B. HENDERSON, FRANK W. ERLIN,  
WILLIAM G. HENSHAW, TYLER HEN-  
SHAW, GEORGE T. CAMERON, FRED H.  
MUHS, JOHN C. EDEN, A. A. SUTHER-  
LAND, A. F. COATS, ALEXANDER BAIL-  
LIE, W. P. CAMERON, R. P. BUTCHART  
and CLARK M. MOORE,

Defendants.

### **Bill of Exceptions.**

BE IT REMEMBERED that on Friday, the 10th day of December, 1920, that certain cause came on to be heard in the District Court of the United States for the District of Oregon, wherein the United States of America is the plaintiff, and S. H. Cowell, W. H. George, F. G. Drum, R. B. Henderson, Frank W. Erlin, William G. Henshaw, Tyler Henshaw, George T. Cameron, Fred H. Muhs, John C. Eden, A. A. Sutherland, A. F. Coats, Alexander Baillie, W. P. Cameron, R. P. Butchart, and

Clark M. Moore are defendants, before the Honorable R. S. Bean, District Judge, presiding, upon the indictment found in the said court against the defendants by the grand jury of the United States for the District of Oregon, dated the 27th day of October, 1916, the United States appearing by Mr. Lester W. Humphreys, District Attorney, and Mr. Hall S. Lusk, the assistant District Attorney, and the defendants R. P. Butchart and Clark M. Moore by Mr. Wirt Minor and Mr. A. B. Winfree, attorneys, and thereupon the following proceedings were had. [67]

The attorneys for the several parties having declared themselves ready for trial, a jury of twelve men was called, examined regarding their qualifications as jurors, accepted by the several parties, impaneled and sworn, and thereupon opening statements were made to the jury by the attorneys representing the United States and the said defendants, and thereupon the United States offered in evidence the stipulation entered into by and between the said defendants and the United States, marked Exhibit 1, and read to the jury, and before the same was read the attorneys for the said defendants in open court objected to the introduction of any evidence in the cause upon the ground that the indictment does not state facts sufficient to charge a crime of any kind or any violation of the law. Thereupon the Court overruled the objection and an exception was taken and allowed to the said defendants, and thereupon the said defendants by their attorneys stated that they desired to object to the introduction of

any paper or writing offered in evidence, the date of which is prior to the date of the organization of the Oregon Portland Cement Company, and that for the convenience of the Court and of counsel it should be understood that such objection was made to each paper so dated, it being understood that the Oregon Portland Cement Company was not organized or in business until the — day of August, 1915, and thereupon it was agreed that each paper or writing offered in evidence by the United States bearing date prior to the said date of the organization of the Oregon Portland Cement Company, should be deemed objected to, the objection overruled and the exception allowed to the said defendants, and thereupon the United States by its attorney offered in evidence the testimony of Tyler Henshaw taken upon the former trial of this cause in 1919, [68] and offered in evidence in pursuance of a stipulation entered into between the United States of America and the said defendants R. P. Butchart and Clark M. Moore, it being understood that every objection made to any evidence given by said witness upon the former trial to which objection was made at that time should be subject to the same objection, that the same ruling should be made thereon, and an exception allowed to the defendants where the ruling was adverse to the defendants and thereupon the testimony of said Henshaw was read to the jury and therein the said Henshaw testified as follows:

**Testimony of Tyler Henshaw, for the Government.**

“I live in Oakland, California, am engaged in the business of manufacturing cement. My company is the Riverside Portland Cement Company, of which I am vice-president and general manager. I have held this position since the organization of the company in 1905. Its plant is located at Riverside in southern California, about 57 miles east of Los Angeles. This company is the one designated in this market and in the indictment as the southern California Company. Its capitalization is two and one-half million dollars in stock and one million dollars in bonds. Its plant has a capacity of about 5500 barrels a day with twelve kilns. This company did ship cement into the state of Washington and into the State of Oregon. It stopped shipping into both states, into the state of Washington in about 1912 or 1913, into Oregon in the latter part of 1915, it withdrawing entirely from the Washington market in 1913 and from the Oregon market in 1915. I am familiar with the officers and managers of the various California cement companies and with the officers and managers of the Washington and Oregon cement companies. When in business in Oregon I had an agency in the city of Portland. In 1914 and 1915 and until [69] we withdrew, C. W. Jones represented us. Our office was in the Railway Exchange Building. I have known the defendant R. P. Butchart for six or seven years. I have known him principally as a cement manufacturer, controlling or having an interest in the



(Testimony of Tyler Henshaw.)

Vancouver Portland Cement Company, located at Tod Inlet, a Canadian concern. I did not know him as a stockholder in the Washington Portland Cement Company. I did know him as a stockholder and president of the Oregon Portland Cement Company,—I think possibly as early as 1915. I knew of his interest in the Oregon Portland Cement Company prior to our withdrawal from the state of Oregon. I never knew Clark M. Moore,—never saw him that I know of. When I withdrew from the Washington market I did so after a conference with Mr. John C. Eden, president of the Superior Portland Cement Company. No inducements were offered me to withdraw. Mr. Eden told me that their market had fallen off very badly, that there was not enough business in Washington for the two companies then manufacturing in western Washington and as we were enjoying a very large business in southern California asked me if I would be willing to withdraw from Washington. I told him that our business there was not so valuable that I cared for it, but that I was under obligations to F. T. Crowe & Company who were our agents in Seattle and Tacoma and had to protect them, and that if he would furnish them with cement so that they could continue in the market I would be willing to withdraw from the Washington market, otherwise I would have to stay in that market indefinitely. I did not discuss my intentions with any other California company or with any other Washington company. This was the only conversation that I re-



(Testimony of Tyler Henshaw.)

member having on this matter. The withdrawal of our company from the state of Oregon was a matter [70] which came up between the president of the Riverside company and myself. It was not discussed at any conference with other cement manufacturers and no other officers of the Riverside Portland Cement Company took part in the discussion. The president of the Riverside Company is Mr. W. G. Henshaw, my brother. He wished to withdraw from Oregon as the prices were so variable and the result of our work in Oregon so poor and the profits so small and the risks so great that the game was not worth the candle. The risks he referred to were bad accounts. Sometimes in a month our accounts might run to \$125,000 or \$150,000 and we were bound to lose a percentage of these accounts. The risk of any invasion of southern California was not considered. The four or five northern California companies are invited to the southern California markets whenever they wish to come and always have been. We never had the same price in the Oregon market that I ever knew of. We cut prices continually in Oregon whenever we needed business; we had to. I have cut as low as \$1.55 a barrel. This was really selling at a loss. It was my brother who did not care for the Oregon market. The question between us was a question of policy. The situation in 1914 and 1915 is not very fresh in my memory."

Thereupon the witness identified a carbon copy of a letter written by the agent of the Riverside

(Testimony of Tyler Henshaw.)

Portland Cement Company to the witness from Portland, dated April 1, 1914, which letter was offered in evidence marked Exhibit 1, objected to by the defendants, the objection overruled and exception taken and was read to the jury, and the witness further testified:

“Mr. Statter was the representative in Portland at that time of the Pacific Portland Cement Company, a northern [71] California company.”

Thereupon the witness identified the carbon copy of a letter dated April 7, 1914, written by C. W. Jones to the witness, and a letter written by the witness to said Jones from San Francisco dated April 11, 1914, and the said carbon copy and said letter were offered in evidence as one exhibit marked Exhibit 2, and over the objection and exception of the defendants on account of their date were read to the jury.

Thereupon the witness further testified: “I should say at the time those letters were written competition in the State of Washington was very active between the Washington mills and that competition in the State of Oregon as between the California mills was active. The situation in the Oregon market right straight through was that when any contract for any amount of cement of a thousand barrels or over came up there was never a market. The companies fought for it and that company got the order which put in the lowest bid. This was the situation in that market during the five years that I was in that market so that we

(Testimony of Tyler Henshaw.)

were unable to do anything but lose money in that market and yet we had the lowest cost I think on the average of any cement mill on the Coast. There was nothing to prevent us from withdrawing from that market at any time. There was always a scrap between the California companies in California. Sometimes I was in it and sometimes I was not."

Thereupon the witness identified carbon copy of a telegram from C. W. Jones to witness, dated April 19, 1914, and the same was marked Exhibit 3 and offered in evidence over the objection and exception of defendants on account of its date and read to the jury. [72]

Thereupon the witness identified carbon copy of a letter written by C. W. Jones to the witness dated April 20, 1914, and the same was marked Exhibit 4, offered and received in evidence and read to the jury over the objection and exception of the said defendants on account of the date.

The witness further testified: "I have no copy of the letter written by me to Jones dated April 20, 1914. The Government took about 480 of our letters. It had our files for a week or ten days to go over and I have no recollection of any letter of that date or of its contents."

Thereupon the witness identified a letter dated April 25, 1914, written by the witness to C. W. Jones, and the same is marked Exhibit 5, offered in evidence and received and read to the jury over

(Testimony of Tyler Henshaw.)

the objection and exception of the defendants made on account of its date.

The witness further testified: "From this letter it appears that conditions in the Oregon market were not stabilized, that the market had evidently gone to pieces."

Thereupon the witness identified a letter written by the witness to C. W. Jones, dated April 29, 1914, and the same is marked Exhibit 6, offered in evidence and received and read to the jury over the objection and exception of the defendants made on account of its date.

The witness further testified: "Statter was the agent of the Pacific Portland Cement Company. In this letter when I say 'overt act' I would say that my policy all through was to try to hold up the market and not do any cutting,—to maintain a stable price. It is always a temptation to a salesman or branch [73] manager to cut his price and get a contract and I didn't want to do that. I endeavored to avoid that policy as far as possible. All of these letters are along the same line. In the letter when I say 'we don't want to invite serious trouble down here' I do not mean in lower California. I did not worry or fear that the northern California mills would invade the Southern California field."

Thereupon the witness identified the letter written by the witness to C. W. Jones dated May 13, 1914, which letter was marked Exhibit 7, offered and

(Testimony of Tyler Henshaw.)

received in evidence over the objection of the defendant on account of its date, and read to the jury.

The witness further testified: "This letter does not indicate that there was any fear of the central California mills invading southern California. We did not control the southern California market, I cannot remember the details of things of this sort. The letter indicates that there was a threat on the part of the central California mills to make any sort of a fight to increase their business. At times they would have a very small market. They had built large mills when there were no other mills except theirs; the demand for the cement increased, they drove out foreign mills which were selling at the rate of about \$3.50 per barrel. I have paid myself as high as \$6.50 per barrel. Gradually other mills came in. The central California mills had built these large mills to supply the Coast trade and sold up to Montana and into Arizona. Then mills were built in Western Washington, later on in southern California. The central California mills could do nothing against these mills. They were cut out of Washington, then out of eastern Washington and Montana. [74] The result was that territory was small and it was hard going for them. They had large mills on their hands; they had to produce a good deal of cement to keep the price down to a reasonable figure, otherwise the overhead would go out of sight. I was not afraid of an invasion of southern California, but was afraid the central California mills would go wild



(Testimony of Tyler Henshaw.)

on all markets everywhere. I note the expression 'there is an attack threatened upon us of rather a serious nature by the central California mills.' This would happen from about every three to six months. I was not so much afraid of the threat but rather of the fact that they were apt to go into all the markets and break up everything. They may not have had that idea."

Thereupon the witness identified telegram and letter from C. W. Jones to witness dated May 21, 1914, and the same were marked Exhibit 8, and offered and received in evidence over the objection of the defendants on account of the date thereof and were read to the jury.

The witness further testified: "In connection with the telegram of May 21, 1914, in which I said 'do not care to take business away from any California mill,' as I explained before their territory had been shortened up, they claim it was hard for them to get a reasonable tonnage in Oregon particularly. I never attempted to get more than a moderate amount of business in Oregon. You may call it an act of charity if you choose. The companies mentioned in this telegram were all California companies. The telegram was sent by my agent Mr. Jones."

Thereupon witness identified the telegram from C. W. Jones to witness, dated May 27, 1914, marked Exhibit 9, and the same was offered and received in evidence over the [75] the objection of the



(Testimony of Tyler Henshaw.)

defendants on account of its date and read to the jury.

The witness further testified: "From these telegrams it appears there was active competition at that time between the Washington mills and the California mills for business in Oregon. There was no agreement so far as I know between the California mills in regard to the market in Oregon. I didn't care to disturb conditions in Oregon and have given you my reasons therefor."

Thereupon the witness identified telegram dated May 28, 1914, from C. W. Jones to witness, marked Exhibit 10, and the same was offered and received in evidence over the objection of the defendants on account of its date and read to the jury.

The witness further testified: "Previous correspondence shows that the fight was largely between Washington mills and California mills at that time. Things changed later. They were forever shifting."

Thereupon witness identified a letter dated June 1, 1914, from the witness to Jones and the same was marked Exhibit 11, and was offered and received in evidence over the objection and exception of the defendants on account of its date and read to the jury, and also in connection therewith a telegram from said Jones to the witness dated June 1, 1914, marked Exhibit 12, was also offered and received in evidence over the objection and exception of the defendants on account of its date and read to the jury; and also a letter from the witness to said Jones dated June 11, 1914, marked Exhibit 13, which

(Testimony of Tyler Henshaw.)

was offered and received in evidence over [76] the objection and exception of the defendants on account of its date and read to the jury; and also identified a letter from said Jones to the witness dated July 2, 1914, which was marked Exhibit 14, offered and received in evidence over the objection and exception of the defendants on account of its date and read to the jury; and also a telegram dated July 3, 1914, from said Jones to the witness which was marked Exhibit 15, offered and received in evidence over the objection and exception of the defendants on account of its date and read to the jury; and also a night lettergram from said Jones to witness dated July 6, 1914, which was marked Exhibit 16, offered and received in evidence over the objection and exception of the defendants on account of its date and read to the jury; also a letter from said Jones to the witness dated July 6, 1914, which was marked Exhibit 17, which was offered and received in evidence over the objection and exception of the defendants on account of its date and read to the jury; also a letter from said Jones to the witness dated July 11, 1914, which was marked Exhibit 18, offered and received in evidence over the objection and exception of the defendants on account of its date and read to the jury; also a telegram from the witness to said Jones, dated July 11, 1914, which was marked Exhibit 19, offered and received in evidence over the objection and exception of the defendants on account of its date and read to the jury; also a telegram from said Jones to

(Testimony of Tyler Henshaw.)

the witness dated July 31, 1914, which was marked Exhibit 20, offered and received in evidence over the objection and exception of the defendants on account of its date and read to the jury.

The witness further testified: "All these letters show that we were simply trying [77] to keep in this market as well as we could and hold it up as well as we could without knowing what the conditions were. After looking at these letters and telegrams I would say there was no general conference at all or that I knew of at that time or about that time between California dealers looking to a change in prices. It appears that there was some discussion with Mr. Cameron of the Santa Cruz Portland Cement Company in regard to doing away with dealers. I had no conversation with any other cement maker than Mr. Cameron and had no intention of doing away with our dealers. If I wished any information I called Mr. Cameron up by phone and asked what they proposed to do, but I attended no meeting of cement men after 1911 or 1912."

Thereupon the witness identified a letter dated August 1, 1914, marked Exhibit 21, written by the Riverside Portland Cement Company from Portland to Walther-Williams Hardware Company of The Dalles, which letter was offered and received in evidence over the objection and exception of the defendants on account of its date and read to the jury; and also a letter written by Mr. Jones to the witness, marked Exhibit 22, dated August 1, 1914, which was offered and received in evidence over

(Testimony of Tyler Henshaw.)

the objection and exception of the defendants on account of its date and read to the jury; and also a telegram from said Jones to the witness, dated August 1, 1914, which was marked Exhibit 23, which was offered and received in evidence over the objection and exception of the defendants on account of its date and read to the jury; also a telegram from the witness to said Jones, dated August 1, 1914, which was marked Exhibit 24, offered and received in evidence over the objection and exception of the defendants on account of its date and read to the jury; also a [78] telegram from the witness to said Jones dated August 7, 1914, marked Exhibit 25, which was offered and received in evidence over the objection and exception of the defendants on account of its date and read to the jury; also a letter dated August 17, 1914, from said Jones to the witness marked Exhibit 26, offered and received in evidence over the objection and exception of the defendants on account of its date and read to the jury; also a letter from the witness to said Jones, dated August 19, 1914, marked Exhibit 27, which was offered and received in evidence over the objections and exception of the defendants on account of its date, and read to the jury; also a letter from said Jones to the witness dated August 24, 1914, marked Exhibit 28, which was offered and received in evidence over the objection and exception of the defendants on account of its date and read to the jury.

(Testimony of Tyler Henshaw.)

The witness further testified: "The letter of August 1, 1914, Exhibit 21, was a letter sent to the general trade by my agent in Portland under my instruction. It indicates that we followed the market. We did not make the price, we went up and down with it. As far as I know and as far as we were concerned the price at Flavel and Astoria did not include the freight rate from Portland to Astoria. We adhered to the policy that if a shipment went straight to Astoria freight from Portland to Astoria was not added to the price. I am not sufficiently familiar with the situation to testify definitely upon that proposition. I was not there."

Thereupon the witness identified a letter written by the witness to R. P. Butchart, dated September 24, 1914, the same was marked Exhibit 29, offered in evidence over the objection of the defendants not only on account of its date, [79] but also on the ground that it was irrelevant as it had nothing to do with the cement business nor tend to establish any of the issues presented by the indictment, but the objection was overruled and the letter admitted in evidence and read to the jury.

The witness further testified: "I don't know when Mr. Butchart became connected with the Oregon Portland Cement Company. I knew it before the plant began to operate in June, 1916. It was a matter of indifference to me personally whether he went into the company or not."

Thereupon the witness identified the letter dated November 16, 1914, written by William G. Hen-



(Testimony of Tyler Henshaw.)

shaw to C. W. Jones. The same was marked Exhibit 30, and offered and received in evidence over the objection and exception of the defendants on account of its date and read to the jury.

The witness further testified: "Refreshing my memory from this letter I would say that the Riverside Portland Cement Company withdrew from the Portland market in 1914. I thought it was 1915."

Thereupon the witness identified a letter written by C. W. Jones to the witness, dated December 5, 1914, and a telegram of the same date, marked together Exhibit 31, and offered and received in evidence over the objection and exception of the defendants on account of its date and read to the jury.

The witness further testified: I do not recall meeting Mr. Eden of the Superior, Mr. Coats of the Washington or Mr. Cameron of Balfour-Guthrie Company in San Francisco the latter part of 1914. I attended no meeting with these gentlemen nor did Mr. Jones. Jones [80] generally kept me informed of everything that went on, but neither he nor I attended any meeting."

Thereupon the witness identified a letter to A. C. Steckle, written by the Riverside Portland Cement Company, dated March 18, 1915, marked Exhibit 32, and the same was offered and received in evidence over the objection and exception of the defendants on account of its date and read to the jury.

Thereupon the witness identified a letter written by C. W. Jones to the witness, dated March 9, 1915, and the same was offered in evidence and objected



(Testimony of Tyler Henshaw.)

to by the defendants not only on account of its date, but also upon the ground that it related *only* to the interstate bridge matter and was not competent, relevant or material to any charge made in the indictment. This objection was overruled and exception allowed and the letter was received in evidence, marked Exhibit 33, and read to the jury.

The witness further testified: "Mr. Jones was retained as our agent in Portland to close up the business. He was not interested in any fight for cement in Oregon. He was only closing up the business and this is all that we ever knew of the interstate bridge matter as we had no interest in the price of cement in Oregon or Washington."

Thereupon the witness identified a telegram from William Pierce Johnson to the witness, dated June 5, 1915, and a letter from the witness to said Johnson, which were together offered as one exhibit numbered 34, and received in evidence over the objection and exception of the defendants upon the ground that the same did not tend to or relate to any matters alleged in the indictment, but were irrelevant [81] and incompetent for any purpose, but the objection was overruled and exception allowed and the telegram and letter read to the jury.

The witness further testified: "Mr. Johnson was president of the Willamette Pulp and Paper Company with its main office in San Francisco, with one of its plants in Oregon City, and three plants in Oregon. Our company was not agent for any other California brand in Oregon. I have no

(Testimony of Tyler Henshaw.)

recollection what brand of cement it was intended to supply to the Willamette Pulp and Paper Company. The matter was managed undoubtedly by Mr. Jones. Johnson was a personal friend of mine and I was willing to help him as far as possible. We had withdrawn from the Oregon market at that time. We could not furnish Riverside cement as we had withdrawn from the Oregon market and I do not recall what California brand I had in mind to supply."

Thereupon the witness identified the letter from C. W. Jones to the witness, dated July 6, 1915. The same was marked Exhibit 35 and offered and received in evidence over the objection of the defendants on account of its date and read to the jury.

The witness further testified: "This paper does not refresh my mind or indicate that there was a conference about that time. If there was a conference I was not present or any representative of the Riverside Portland Cement Company."

Thereupon witness identified a letter from the Bend Company to the Riverside Portland Cement Company, dated August 20, 1915, marked Exhibit 36. The defendants objected to the introduction of this letter not only on account of its date, but because the same was irrelevant and incompetent as it did not tend to prove or relate to any matters alleged in [82] the indictment, but this objection was overruled and an exception allowed and the letter was received in evidence and read to the jury.

The witness further testified: "Refreshing my

(Testimony of Tyler Henshaw.)

memory by the correspondence, I would say that the Riverside Company left the state of Washington either in 1912 or 1913 at the request of Mr. Eden, the president of the Superior Portland Cement Company, and was not influenced by any threat of the northern California companies nor did the northern California companies threaten to retaliate if the Riverside Company did not leave the state of Oregon. I understood way back in 1910 when the Riverside Company first entered the State of Oregon that Mr. Baker, president of the Pacific Portland Cement Company threatened to go after us in Southern California if we came into Oregon and Washington. Our company left the State of Oregon in the fall of 1914 and has not actively returned to the Oregon market, and the correspondence does not indicate that we were willing to sell secretly. The matter with the Willamette Pulp and Paper Company was a purely personal matter. Mr. Johnson was a friend of mine and I told Mr. Jones, our agent, to see if he could do anything. We were not selling cement in Oregon. I assumed the responsibility for the secrecy of this transaction. I have talked with Mr. Butchart about his connection with the mill in the state of Oregon, on one occasion, I think. I think it was a year and a half before the Oregon mill started. Mr. Butchart told me that he felt morally obliged to go on with an agreement to put some money in this enterprise if the rest of the money was raised. About that time I was invited

(Testimony of Tyler Henshaw.)

to participate in this Oregon enterprise and at one time a few of the [83] stockholders suggested that if I would put a little money in it they would like to see me take the presidency. I had some discussion with them about it and determined that I would not. No salary was offered me. We didn't get down to anything of that sort."

And upon cross-examination the witness testified: "About a year and a half or two years, I think, before the Oregon company began the manufacture of cement, when the mill had been built up to a certain point and had spent all its money, and those interested were endeavoring to raise enough more money to complete the mill and start it, I heard that Mr. Butchart had some money in it. I thought I knew many conditions affecting this mill that made me believe it would be a poor investment and I sought Mr. Butchart out as a matter of friendship, told him what I thought of the enterprise, asked him if he was interested in it and he told me he had put a little money into it and had promised to put more in provided the balance which was to be raised was properly raised. He was going to put in \$100,000.00 or \$200,000.00 more. I asked him how long this promise had been out. My whole interest was, if possible, to keep him out of it, and I found that he felt a good deal as I did and said that this promise had been made eight or ten months before at a time when it was expected the balance of the money would be raised within two

(Testimony of Tyler Henshaw.)

or three months, I told him that I thought his moral obligation was ended after waiting so long. He said he did not think it was ended and that he wanted to live up to any moral obligation; that he felt that his word given was as important as his written word. I then suggested that he notify the parties, giving them two or three months more in which to raise the [84] money and if it was not raised in that time he would be exonerated from going ahead if he didn't want to. He made no answer to this, as far as I remember, and the conversation dropped. My discussion of the matter was largely on account of the physical features, the expense of hauling rock from Roseburg and from Dallas, the freight cost as the mill was not placed near enough to Portland to save another freight charge to Portland which is the main distributing market, so that by the time they got their cement into the market it seemed to me they would pay the railroads the largest cost of their cement or a large part of the cost. I was never interested in the enterprise and I never had any other talk with him about the matter. I never had any talk with him at all about any meetings in San Francisco and he never spoke to me about any such meetings.

My attention being called to Exhibit Numbered 5 I would say that what was meant by this exhibit is that the selling price of cement as I understood it was \$1.70 per barrel. This was the price at which we sold to consumers. In this letter in which I say 'I don't imagine any prices are being



(Testimony of Tyler Henshaw.)

seriously maintained in Oregon except by the California mills' I meant that the northern mills at that time were cutting prices in the market and I assumed that the California mills were attempting to maintain a stable market as against the Washington mills. The latter part of this letter distinctly states my policy in this market. Mr. Dinwiddie, mentioned in one of these letters, was a contractor in Portland. I think he had the contract on the Meier & Frank Building. After the date of my letter to Jones of June 11, 1914, we were still cutting rates in Portland on cement. There was never within my experience a stable price [85] in Portland or in the Oregon market. I don't believe we sold any two consecutive bills at the same price,—I mean bills of any size. In this letter I stated to Jones that I assumed that he would stick to the price of \$1.70 in Portland. When we started in the beginning of 1914 the market was \$1.70 with sacks added. The market had been jumping around for all previous years and I made up my mind that I would stick to this price myself. If the market went lower of course I would have to follow but if it went higher I would not follow and that is what I meant by that letter. We absolutely did stick to this price unless the market went lower and then, of course, we followed it, but we stuck to this price when the market went higher.

Mr. Coe, mentioned in Exhibit 14, as in our employ,—an expert on cement properties and went up



(Testimony of Tyler Henshaw.)

and down the Coast on our behalf looking up and reporting on various lime properties. I never knew anything about the occasion of Messrs. Erlin, Coats and Eden being in San Francisco. The only information I had about this was a telegram from Jones and he seemingly stumbled upon this fact. In July, 1914, I was advised by our agent, Mr. Jones, that companies were quoting \$1.50 net f. o. b. cars or dock. We met this price as far as we felt it wise to do so. It was a price which meant a cold loss for every barrel sold but we had to meet this price to protect our customers when necessary. Mr. McPherson was an assistant of Mr. Jones in our Portland office. Mr. Parker, mentioned in these letters, was superintendent of our mill at Riverside. I don't remember whether we delivered the cement for the Meier & Frank job or not. I think we did.

My attention being called to Exhibit 7 I would [86] say that we store our cement in a warehouse along the river, the floors of which are more or less open. Moisture would come up and gradually the cement would absorb the moisture and slowly harden from the outside in. When this had gone on to some extent it would become necessary for us to get rid of such cement before we lost it altogether, for when it hardened the strength was taken from it. The cement was becoming damaged and we had to sell it for whatever we could get for it. This policy I think is pursued by all cement companies though some of them recondition it, but then

(Testimony of Tyler Henshaw.)

only get partial results and sell at a reduced price. In one of these letters I speak about freight being 55 cents; that refers to freight from Riverside to Portland and means 55 cents a barrel. Cement is brought from Riverside by rail to tide water and there transferred to schooners that have come down loaded with lumber and are going back empty. They would take cement at a very low rate compared to the regular steamer service. The schooners would take cement up the river to Portland and deliver it and then reload with lumber going south. When the cement reached Portland we had the expense of handling it in Portland, but in this I mean the actual docking expense. The 55 cent rate was the rate by rail to tide water and then by schooner to Portland.

My attention being called to Exhibit 27, dated August 19, 1914, I would say that I had set \$1.70 as my high limit for that year and that when the market here had gone to \$1.90 I still maintained my \$1.70 price.

My attention being called to Exhibit 29, my letter to Mr. Butchart of September 24, 1914, I would say this letter is composed of two parts;—one in regard to the possibility of building a mill in southern California which [87] would become a direct competitor of our mill and the other in regard to a prospect that I had of a material which, when mixed with cement, would make an excellent cement itself and would cheapen the cost of cement in this market. Carl Leonard, mentioned in this

(Testimony of Tyler Henshaw.)

letter, is a German; was a contractor in Los Angeles for a number of years, is interested in a good many cement mills; at one time he had an interest in the Oregon mill and was interested in some other mills with Mr. Boettcher in Denver. As at that time the mills in California could produce double the amount of cement the market would absorb, it seemed a pity for another mill to come in and simply add that much excess output of cement in a small and limited field. Regarding the other matter, if this material referred to turned out as the tests so far as I had gone then indicated, I could produce a cement here that would be equal to Portland cement at 65 to 67 cents a barrel against our old cost at that time of delivering cement in this market of about \$1.65 per barrel. If this material proved successful it would be impossible for any mill away from Oregon to meet the price as the freight rates would add to the cost of delivering here. I considered that if this material turned out as it promised that the Riverside Company would be swept out of the Oregon market with the rest. We have never manufactured this material or sold any yet. I am not quite satisfied with the experiments. I wrote Mr. Butchart about it because I had heard that he was looking into the Oregon mill or was thinking of going into it and knew that if this material turned out as good for cement as the laboratory tests promised, I thought it a matter of friendship for me to let Mr. Butchart know so he

(Testimony of Tyler Henshaw.)

could stay out of this mill if he saw fit. It [88] was entirely a matter of friendship.

My attention being called to the correspondence from Jones, Exhibit 31, I would say I did not see either Eden, Coats or Cameron at any meeting. I never saw Mr. Cameron of the Olympic until he was on the stand. I never met him. Mr. Eden may have come into the office but I don't know anything about what he was doing in San Francisco and I am sure that Mr. Coats didn't come into the office at all.

I never heard of the matter mentioned in Exhibit 32 or knew anything about this matter. Mr. Jones was merely doing an act of courtesy in business.

All I know about the interstate bridge contract is what is shown by Exhibit 33. I had nothing to do with it and met nobody.

Mr. W. P. Johnson had several paper plants, one located at Oregon City, one at Camas and one probably at Lebanon. He was also interested in two plants over in Canada. We were intimate and it was natural for him to ask me to help him about buying cement.

The telegram from Mr. Jones saying 'representatives of every cement mill in the Northwest are in San Francisco today' was only a matter of information. It didn't concern me. This telegram was sent June 6, 1915. The correspondence between the Bend Company and Mr. Jones,—this is the first time I ever have seen it. I presume all this correspondence came from our office. A represen-

(Testimony of Tyler Henshaw.)

tative of the Government came and demanded the right to go through our files. Mr. Jones wired me and I wired back to open our files and give every possible information. The Government agents went through our files in Portland. I don't think [89] they went through our files in California. The letters which the Government offered in evidence were taken from our Portland files. They took some 480 letters I understand, or sheets. Mr. Jones, I think, kept a record of them. When we were in business in Portland we sold cement for what we could get for it and met all competition and cut the price which was fixed from day to day. But one year I fixed the price at \$1.70 as my maximum. I was simply going up and down as a rule with the market and the market in Oregon was going up and down as a rule all of the time we were in business in Oregon. I know about the net result of our operations in Oregon because I had a conversation once with Mr. Reames, the District Attorney, at his request and I told him that we had not made enough money in Oregon during the time we were in business there to warrant the risks we had run. Mr. Reames asked me if our business would prove this and seemed surprised when I told him that I thought so. Upon investigation made by Price, Waterhouse and Company it appears that we lost money in Oregon during the five years we were in business here. These parties are chartered accountants. We quit business in Washington in 1912 or 1913 at the request of Mr. Eden. Our vol-



(Testimony of Tyler Henshaw.)

ume of business there was small and I told him that the only commitment that I had in that territory was to Crowe & Company. I had arranged with Crowe & Company when I went into that market, not for any particular period for I did not know what would be the attitude of other cement companies, whether they would try to drive us out of that market or not. I had told Crowe & Company that if I did quit the market they should have some other cement to sell in place of mine. I quit without any threat on the part of anyone. Our business was very large in southern [90] California and there was no mill in the Oregon market and we still had the Oregon market to fall back on. While in business in Washington we made a little money because Crowe & Company were our agents, doing business on a 15 cents a barrel profit to them so we had no bad accounts. I never had any talk with Mr. Butchart about retiring either from Oregon or Washington. I have known Mr. Butchart intimately for several years. I never saw Clark M. Moore that I know of."

Upon redirect examination the witness further testified: "I am still on very friendly terms with Mr. Butchart and discussed this case with him since coming up here. Our conversations were usually around the hotel. I saw Mr. Minor, Mr. Butchart's attorney, a month ago in his office. I went up there on my own volition. I talked with him in a general way about my testimony but went into no details. I have not talked with Mr. Minor since



(Testimony of Tyler Henshaw.)

I gave my testimony on yesterday, that is to say, I have not talked about the testimony. I saw him at the hotel this noon."

Upon recross-examination the witness further testified: "I remember what I talked to Mr. Minor about this morning. He said Mr. Butchart wanted to see me and the talk which I had with Mr. Minor at noon had nothing to do with the trial of this case. When I had the talks with Mr. Minor in his office a month or more ago he did not ask me anything about what testimony I was going to give. I went to his office and gave him the history of what I knew about the business. I went of my own accord. I told him I had been subpoenaed by the Government and asked him whether it would be proper for me to talk to him about what I would [91] testify to without also making the matter known to the Government and he told me to go ahead and tell everything in the world I knew and that anything I said to him I had a perfect right to disclose to the Government. This was all the talk which I had with him and he asked me no questions at all except to say to me to tell the jury the whole thing."

### **Testimony of C. F. Swigert, for the Government.**

Thereupon the District Attorney called as a witness C. F. SWIGERT, who testified as follows:

"I live in Portland and have lived there about 38 years. I am a contractor, president of the Pacific Bridge Company, with an office at the foot of

(Testimony of C. F. Swigert.)

East Salmon Street. We were contractors for the substructure and floor of the interstate bridge between Portland and Vancouver.”

Thereupon the attorneys for the defendants, R. P. Butchart and Clark M. Moore, objected to any questions and any evidence regarding the interstate bridge between Portland and Vancouver upon the ground that that matter was prior to the time that the Oregon Portland Cement Company commenced business and that the said matter was incompetent, immaterial, and irrelevant because it does not bear upon any question tending to show that the defendants Butchart and Clark M. Moore were parties to any conspiracy, but the Court overruled the objection and the attorneys for the defendants excepted to the ruling; the exception was allowed.

The witness testified: “By substructure I mean piers and we use cement for this purpose. We made arrangements to buy cement from the International Portland Cement Company of Spokane, estimated quantity about 300,000 barrels. I can not say how much we finally used. The International Company agreed to supply the cement at \$1.65 per barrel delivered in Portland, [92] conditioned that a rate from Spokane to Portland of 13½ cents a hundred should be put in. We had quotations from other cement companies prior to the time the bids were taken. These quotations were \$1.90 Portland or Vancouver net, but after the contract was given to us we had several proposals, the lowest

(Testimony of C. F. Swigert.)

of which, as I recall, was about \$1.75 or \$1.78 net to us, but we didn't close on this. The reason for going to Spokane people was that we were customers in Spokane of this company; we were doing work up there. The price in Spokane at that time ran from \$1.08 to \$1.15 per barrel by reason of there being a bitter fight between the International and the Lehigh. The Lehigh Portland Cement Company was a branch of a National institution and had a number of mills, one of them near Spokane, and the International Portland Cement Company was a local concern, not very strong. The Lehigh was trying to put the International out of business and as the International people were friends of ours we had some sympathy for them and also thought it was a good chance by dealing with them of getting the rate established and making a material saving on cement, which we were able to do. We went to them, showed the rates from California, from the Washington cement mills and from Huntington to Portland, and showed we could favor a rate to the Spokane, Portland & Seattle Railway which was best for us because it ran directly to the bridge and this would give the Spokane to Portland a better rate than the Southern Pacific or Washington lines were giving per mile and give the International Company the business at a little better price than they were getting at Spokane,—I think a price which would net them about \$1.11 or \$1.12. We also went to all the other contractors who were friends of ours here [93] and lined up about

(Testimony of C. F. Swigert.)

60,000 barrels of cement and got provisional contracts, all subject to this rate going into effect. This proposition was attractive, both to the International Portland Cement Company and to the Railroad Company as there was 60,000 barrels of business involved. We interviewed with some of the Washington Portland Cement people, interviewed in Mr. Skinner's office, and the Washington coast mills were very much adverse to having this rate put in and said—at least Mr. Coats said, that if we did insist upon Mr. Skinner keeping his promise to put in this rate he would see that we were protected in price. We told him that we were already under contract with the International Portland Cement Company and without their sanction could not do it. Skinner was the traffic manager of the Spokane, Portland & Seattle Railway. He promised us the 13½ cent rate. He called me to his office and said Mr. Coats wanted to see me. They were making strenuous efforts to prevent this rate being put in. I had never met Mr. Coats before nor have I met him since. I think he was the president of the Washington Portland Cement Company and Mr. Eden president of the Superior Portland Cement Company. This occurred in the spring of 1915, probably in April or May. We didn't advertise until the matter was closed up. The cement supplied to us was almost entirely Superior or Santa Cruz, California Cement. Superior is a Washington Cement, made at Cement, Washington, somewhere up toward Puget Sound. Santa Cruz

(Testimony of C. F. Swigert.)

cement comes from California. We paid for this cement the same price, \$1.65. We had the right to buy from the Spokane mill all our needs for that year, everything that was contracted for for that year whether the contracts ran over or not, at \$1.65. When these contracts were finished we never got any cement as cheap as that. [94] We did get various prices all the way up to the present price. At first, when we first began the work we placed our orders with the Spokane mill and they distributed them. They did not supply us with any cement of their own manufacture in this market. They did at Spokane. When orders were placed with the International Company Superior or Santa Cruz cement was furnished on these orders. I think through my influence I got Santa Cruz as it was on our wharf on the other side of the river. I don't recall any new contract being made but after a while we ceased to place orders through the International Cement Company and placed them either directly with the Santa Cruz agent here or with Mr. Bennett of the Superior. We continued buying Spokane cement in Spokane for work in that territory. We didn't have to make any change in the price we were paying them but the price in Spokane very soon went up. The fight was settled but it didn't affect us because we had already contracted."

Thereupon a certain paper being a contract between the Superior Portland Cement Company and the Pacific Bridge Company was shown to the wit-



(Testimony of C. F. Swigert.)

ness and the same was offered in evidence. The defendants each objected to the introduction of this paper, waiving proof thereof, upon the ground that it didn't tend to establish any issue in the case or tend to show any guilt on the part of the defendants or either of them or to show any conspiracy, but the Court overruled the objection and to this ruling the defendants and each of them excepted and the exception was allowed, and thereupon the said paper was marked Exhibit 38 and introduced in evidence and read to the jury.

The witness further testified: [95] "This contract seems to be for all the cement we expected to use, but we didn't get it all from these people. We wished the Santa Cruz people to get a considerable quantity of it because if we got it from them we got the wharfage over our dock, got the additional benefit of handling it and storing it. I don't recall exactly how this was brought about; it must have been by some amicable arrangement. The contract, Exhibit 38, bears date March 6, 1915. The letter transmitting it is dated July 1, 1915. I cannot explain this. The bridge contract was let February 10, 1915, and our original contract with the International people was probably between that date and March 1st. We had propositions before our bid went in to the Bridge Commission and I negotiated afterwards and had bids then for cement. I don't recall exactly but we had various prices below \$1.90, I think some as low as \$1.70 or \$1.75. We got these bids before we got the bid for \$1.65, but we



(Testimony of C. F. Swigert.)

were negotiating all the time with the International Company and had no expectation of getting cement from anyone else. We were conducting these negotiations we thought without the knowledge of other cement companies but kept up our negotiations with them, not believing that we could get as low a price as we thought we could get from the International. We got prices from the coast mills I think as low as \$1.75, I know below \$1.90."

Upon cross-examination this witness further testified: "The bridge contract was let upon bids which were advertised for. I don't think there was any advertisement for bids for cement. I canvassed the market here for bids on cement; went to the agent of the Santa Cruz, went to Mr. McDonald. Oregon Cement Company was not in business at that time. I went to Mr. Bennett over in Vancouver, agent [96] for the Superior Company. I should say, we went to every source that we thought was likely. I didn't conduct all the negotiations. Mr. Simons conducted some of them. My general business is contracting bridges and other structures; have been in that business for about 40 years throughout the country; have used a great deal of cement and purchased it wherever we could get the cheapest price. During this period there was a variation in the price of cement and competition for our business. About this time the price seemed to have congealed or solidified at about \$1.90. They had been selling cement at a good deal less and generally it was understood

(Testimony of C. F. Swigert.)

that they were not making any money. I think everybody decided they had better at least make a little money or at least get the price of their product,—everybody except the two companies in Spokane; they continued a bitter fight between themselves. The Lehigh Company was a national institution with a number of mills. The International Company was a local company and had one mill and it was not particularly strong. The demand for cement was not equal to the supply and for some reason or other the Lehigh seemed to be trying to put the International out of business. Some time afterward the price of cement in Spokane went up. I don't know how high. We finished our work there and got all the cement we required at the old price. We got the cement part from the Superior, part from the Santa Cruz. The color of the Superior and the Santa Cruz was somewhat different and each pier had to be of the same color above water. Santa Cruz is a light colored cement, Superior is a dark colored cement. There is no difference in the quality of the two cements. Cement in this market is supplied by a number of mills. There may be slight [97] differences in quality but all cement must meet a certain standard. Generally speaking all cements are the same. Nobody pays any particular attention if the cement meets the test unless he wants a particular color on some special work. The tests are prescribed by the city for city work, by the State Highway Commission for state highway work, by the

(Testimony of C. F. Swigert.)

Consulting Engineers of the interstate bridge for that work. Generally speaking the tests are very much alike, varying only in small details. I had some talk with Mr. Coats about the rate but not with any other manufacturer. My bid for this bridge work was not based on the price made me on cement in Spokane coupled with the conditions that the rate should be  $13\frac{1}{2}$  cents. We thought this rate might be beaten but we thought we could get the Washington State Railway Commission to put the rate in effect if the Railroads didn't. We had good reason to believe that the Washington companies were quoting Seattle contractors lower prices for cement than they were quoting us and we started in to circumvent this. This Spokane rate was never put in. I took some part in the fight over the rate. I do not remember what was the rate on cement from Spokane to Portland at that time. It was a prohibitive rate,—I should say two or three times the rate we asked for. There are about five barrels of cement to a ton, four bags to a barrel and the  $13\frac{1}{2}$  cent rate means  $13\frac{1}{2}$  cents per hundred pounds, not per barrel. This would be about 54 cents to the barrel. The Oregon Portland Cement Company was not manufacturing at that time. I think they were building a mill at Oswego. I don't know whether they were reorganized at that time, but they were not in the market and had no mill to supply cement and I didn't communicate with them. Mr. McDonald I spoke of [98] represented one of the California mills."

(Testimony of C. F. Swigert.)

Upon redirect examination the witness testified: "We do not consider that there is any particular difference in the quality of the various cements. You can't use any cement on any job until it has been tested and passed and each load must be tested and passed. If the cement passes the test and complies with the specifications that is all we care for. The only other question is a question of price and terms. All companies guaranteed that their cement would pass the test."

**Testimony of F. M. Wylie, for the Government.**

Thereupon F. M. WYLIE, called as a witness on behalf of the United States, testified as follows:

"I live at Aberdeen, Washington; have lived there for about 18 years. Prior to 1915, for about ten years, I was manager of the Aberdeen Manufacturing Company, engaged in the business of buying and selling building materials, mill work, including brick, lime, cement, etc. In 1914 we handled the Cowell Company's cement made in California and got all the cement we wanted from the Cowell people. In December, 1914, we were advised we couldn't get cement from them after January 1, 1915."

Thereupon the witness identified a letter marked Exhibit 39, dated December 28, 1914, and the same was offered and received in evidence over the objection and exception of the defendants on account of its date and read to the jury.

(Testimony of F. M. Wylie.)

The witness further testified: "We tried after that time several other California companies without success. I don't remember whether the Cowell Lime & Cement Company continued to supply us with lime and plaster after that, but I left the Aberdeen Manufacturing Company [99] in April, 1915."

Thereupon the witness identified a carbon copy of a letter dated February 2, 1915, addressed to the Treasury Department, marked Exhibit 40, and offered said letter in evidence. To this letter the defendants objected upon the ground that it was not competent or relevant, that it was not evidence of any fact, a communication addressed to the Treasury Department, unsworn to and the facts, if they were facts, such as the letter details are facts which must be proven by sworn testimony. The Court however overruled the objection and admitted the letter in evidence and to this ruling the defendants excepted and the exception was allowed. Thereupon the counsel for the United States offered to read the letter to the jury and the defendants by their attorneys duly objected to the reading of the letter to the jury upon the ground that what the letter contained would not be evidence, but the court overruled the objection, stating that the statement in the letter was not evidence of any facts other than that a complaint was made, and to this ruling the defendants excepted and the exception was allowed and the said paper was read to the jury, the Court instructing the jury that the letter



(Testimony of F. M. Wylie.)

was introduced simply for the purpose of showing that a complaint was made at the date of the letter and that the letter was not evidence to be considered by the jury as evidence of any facts stated in it.

Upon cross-examination the witness further testified: "I cannot say what proportion of our business was in cement. Some years we sold \$15,000.00 to \$20,000.00 worth of cement. We were manufacturers and dealers in sash doors, and mill work and handled all kinds of building material, sold to the builder, consumer or contractor. We [100] bought our cement from the manufacturer, put it in stock and sold it. Mr. Lebo was in the building material business in the same line in which we were engaged, but not interested in lumber. He was a dealer in cement. Mr. Darragh did not handle building material except cement. He had a dock and freight came over his dock from California. He was a dealer. In 1914 he handled cement of the three Washington companies. In different years we handled different cements but in 1914 we handled only the Cowell cement. Mr. Darragh handled the Pacific Portland cement. Those were the only cements handled in that market as far as I recall. I don't know whether we were all paying the same price or not. I presume we were paying about the same price. We always had a little more or less jockeying around when good jobs came up. I can't say what my competitors were paying but I think we all paid about the same price. That was usually the way but when any big job came up the



(Testimony of F. M. Wylie.)

price was somewhat shifted to get the business. At that time the companies selling in Aberdeen sold through the dealers only, consumers buying from the dealers. As a rule the price we paid was the price set by the companies for that particular point. Every point would have a different price which would be effected by the freight. When we went out to get business we got business at the best price which we could obtain and so did all the other dealers. Ordinarily the manufacturers set a price for Aberdeen. We bought from the manufacturers and in our case we got a discount of 20 cents a barrel. We were at liberty to buy cement from anybody we pleased and if anybody had offered cement cheaper than Cowell I presume we would have bought it."

Upon redirect examination the witness further [101] testified: "Balfour-Guthrie manufactured a cement called the Olympic. We never bought any cement from Balfour-Guthrie. Lebo handled the cement of the three Washington companies, and the brand called Olympic, so far as I know, was manufactured by Balfour-Guthrie."

**Testimony of J. T. Bennett, for the Government.**

Thereupon J. T. BENNETT called as a witness on behalf of the United States, testified as follows:

"I live in Vancouver, Washington and am in the hardware business. In 1914 and 1915 I also carried a partial line of building material, including lime and cement. I did my business under the

(Testimony of J. T. Bennett.)

name of Bennett Hardware Company. In 1915 I handled the Superior cement, manufactured at Concrete, Washington. Olympic wasn't handled much there at that time. The Columbia Feed and Fuel Company carried the Santa Cruz cement which was a California cement. I don't think any other brands were carried at that time. The Red Ash Coal Company have never been regular dealers in cement. Off and on they carried Olympic, I think no other brand. The California companies discontinued selling cement in Vancouver during 1914. At the beginning of 1915 the price of cement seemed to have been established at \$1.90 to the consumer. Mr. Lille, the salesman of the Superior Portland Cement Company was a good friend of mine and he made a trip through there to let me know that the fighting methods were done and that there would be a new deal on."

Thereupon the attorney for the United States asked the witness the following question:

"What did he say to you about it?"

To this question and to any statement made by Mr. [102] Lille the defendants objected upon the ground that it was incompetent as Mr. Lille was merely a salesman and his statements would not bind any of the defendants in regard to their policy unless it was shown that he had the power to make statements or representations. This objection, however, was overruled by the Court and the defendants excepted and the exception was allowed.

(Testimony of J. T. Bennett.)

The witness further testified: "I don't remember Mr. Lille's exact words but he gave me to understand that there was a meeting in San Francisco of the cement manufacturers of the Coast, including Washington and California and that there was no doubt at all but that there would be an adjustment of prices and that prices would be much higher and that there would be no deviation from the prices, and advised me to buy all the cement that I thought I could handle. I acted upon this advice and bought cement, several carloads. A few days afterward we had a wire that the price would be \$1.90 with usual dealer's commission. This was a raise. I think that our prices were around \$1.55 before that. I was dealing in cement at the time the contract was let for the interstate bridge. I wrote to the Superior Portland Cement Company to ascertain if they wanted me to represent them in that case and we busied ourselves finding out who would get the contract and after finding who was the successful bidder I saw Mr. Simons of the Pacific Bridge Company and quoted him the price which I had received of \$1.90 per barrel f. o. b. Vancouver or Portland for Superior cement. The contract I learned went to the International Cement Company of Spokane but this company did not supply its brand. A part of the cement supplied was Superior cement."

[102½]

Thereupon the witness identified the letter written by the witness to J. C. Eden and reply from J. C. Eden upon the back of said letter, the same

(Testimony of J. T. Bennett.)

marked Exhibit 41, and the same was offered in evidence by the attorney for the United States and to this letter the defendants objected upon the ground that it was simply correspondence between the Superior Company and its agent relating to a Commission and did not tend to establish any issue in the case. The Court overruled the objection and admitted the letter in evidence, and to this ruling the defendants excepted and the exception was allowed and the letter, Exhibit 41, was read to the jury.

Thereupon two invoices were identified by the witness, marked Exhibit 42, introduced in evidence and read to the jury.

The witness further testified: "I only remember trying to buy California cement once after the first of January, 1915. It was for a little house in Vancouver in which Santa Cruz cement had been used and owing to a difference in the color they wanted Santa Cruz cement to repair it with. The writer went to Portland and attempted to buy it and was unable to do so unless we paid the retail price in Portland and had it trucked over to Vancouver. There was some reason why they didn't want to sell in Vancouver."

Thereupon the witness identified a letter marked Exhibit 44, and the answer on the back of it, and the same was offered in evidence by the attorney for the United States and to this evidence the attorneys for the defendants objected upon the ground that the same was not competent for any purpose and

(Testimony of J. T. Bennett.)

did not undertake to establish any of the [103] charges of the indictment, but the court overruled the objection and the defendants excepted and the exception was allowed and the said letter and the answer were received in evidence and read to the jury.

The witness further testified: "In the spring of 1916 Mr. Hollister, representing the Oregon Portland Cement Company called on me. It was after their plant had begun operation."

Thereupon the witness identified a letter and answer thereto marked Exhibit 45, and the same were offered in evidence on behalf of the United States. The defendants objected to the evidence upon the ground that the same was incompetent and irrelevant and did not tend to prove any of the allegations of the indictment, but the objection was overruled and to this ruling the defendants duly excepted and the exception was allowed and the letter and answer were received in evidence and read to the jury.

Upon cross-examination the witness testified: "I don't know the date on which Mr. Lille called on me. It was two or three days prior to the time when the price of cement was raised to \$1.90 in our territory. Before that time the prices had been as low as \$1.55. They started in around \$1.90 and battled around until the price got down to \$1.55. I am not sure that Mr. Lille's call was in 1915. I cannot identify the year in which he called. Mr. Lille was a good friend as a salesman usually gets to be. I



(Testimony of J. T. Bennett.)

testified upon the former trial of this case and was asked something about Mr. Lille. I don't remember that I said anything at that time about his being a particular friend. I was sure it was Mr. Lille who called. He told me a good many things and one thing was [104] that the price of cement would be raised. He told me there was a meeting of the different manufacturers of cement on the Coast in San Francisco. They had all gone down there and there was very little doubt but that the price of cement would go up. Upon the former trial of this case I did testify but as to when this conversation took place I was not sure, but I thought it was Mr. Lille with whom I had the conversation, but they changed traveling men or salesmen about that time. I now say I was sure it was Mr. Lille. It seems I was not sure at the time I testified before. I have thought it over since I testified before and have become convinced that it was Mr. Lille. Regarding the letters between myself and Mr. Eden, both Mr. Eden and I considered that because this cement was to be used on the Washington side at Camas that it should be bought from the Washington mills. I didn't figure I had a mortgage on any business because it was in Oregon. The buyer was in Oregon but the cement was to be used in Washington. I did all I could to sell the cement. I did not feel that we were entitled to this sale because it was on the Washington side and in my county. The cement might be bought in San Francisco or Portland. I had a con-



(Testimony of J. T. Bennett.)

versation with Mr. Hollister when he called. I told him I was handling Superior cement. I believe he said that he could ship cement immediately. He named a price but I do not remember what it was. At the time of his call I had nothing more than the dealer's discount of 10 cents a barrel. At one time the Superior had been giving me a further concession. Upon the former trial I testified that previous to this time I had a special commission of 5 cents a barrel over anybody else. When I began to handle Superior cement [105] eleven or twelve years ago it was rather unknown in the territory and some of it had failed when it was new and the Company offered me a concession to sell it. Besides it was worth a little more to handle cement shipped from such a distance because of the long time it took to get it and the greater expense in returning the sacks, and so they made a special concession of 5 cents a barrel but did away with it later. I rather think this concession was taken away when the price was established at \$1.90. The sale price would be quoted to me from Concrete and Portland as the same. It was advantageous to get it from Portland as I could phone to Portland and have the cement the next day and wouldn't have to carry so much stock. The larger the stock the more money it cost to carry it. If I wrote to Concrete it would be 5 days before I could get cement where I could get it from Portland in one day. This is worth something to the dealer and to the consumer. Upon the former trial I testified that my neighbors

(Testimony of J. T. Bennett.)

and I "whipsawed" as we call it. We would find which we could get the lowest price on, reporting to each other, and get the prices down and bought at practically the same prices."

At this time the transcript of the evidence of this witness taken upon the former trial, was placed in the hands of the witness and his attention was called to page 70 thereof wherein he testified as follows:

"Then you bought at the same prices as other parties? A. Practically, yes.

Q. And at the same price at which you could buy from any other manufacturer?

A. To get down to details on the thing, the Superior people were making me, previous to this increase, five cents better than I could buy cement for in Portland, these California branches [106] here. They did that because rather hard to get cement from the Superior Company but could get on a day's notice from Portland from the California output; so the Superior people made us a better price to do so.

Q. So you continued to get five cents better price from the Superior on it?

A. I am telling you the price fluctuated up and down and around previous to July, 1914, and I was supposed to be getting about five cents better.

Q. And then you claim you were getting about five cents from the Superior better price?

A. Yes, sir.

(Testimony of J. T. Bennett.)

Q. Now, you said the price was the same to the consumer; what do you mean by that?

A. Did I say that?

Q. That is what I understood. The consumers were paying the same price, you said, after 1914.

A. I don't think I did.

Q. I thought you said the price was the same to the consumer. What do you mean by price to consumer?

A. The price to the consumer in carload lots on cement was at all times—or at that time was at all times ten cents more than we paid for it in car lots.

Q. What you mean is that the consumer paid you ten cents a barrel more than you paid the mills?

A. Yes, sir.

Q. And that is all; the consumer had to pay that to you and not to the mills, didn't they—the dealer, not to the mill?

A. Yes, they very seldom bought from the mills."

And the witness said: "I didn't intend to say at that time that I got five cents better for the Superior than anyone else after the \$1.90 price was established. In fact, I couldn't buy from anyone except the Washington mill after the price was established. I bought only from the Superior. I am not sure when this price of \$1.90 was established. When I testified before it evidently was in my mind that it was [107] established in July, 1914. Previous to the time when the price was established other dealers in Vancouver were buying from California companies but didn't continue to buy from

(Testimony of J. T. Bennett.)

them afterward. They bought from the Washington company. I don't believe any California cement was sold in that market after July, 1914 to speak of. I don't remember the price Mr. Hollister quoted. I think he was higher than I was paying to the other people. In the two Exhibits 42 and 43, one of December 1, 1915 and the other of October 5, 1916, cement seems to have been differently quoted. The price was the same. In the first one cement was quoted at \$1.80 and sacks at 10 cents which means 40 cents a barrel for the two items and in the other one it was charged at \$2.20 all in one item. I did have a special agreement regarding sacks toward the latter end of the time that I handled cement. I didn't have to pay for the sacks at all, the manufacturer paying the return freight on the sacks. At the very end of the Company became arbitrary and required us to pay for the sacks. I quit handling cement sometime after October, 1916."

**Testimony of Fred W. Harrington, for the Government.**

Thereupon FRED W. HARRINGTON, called as a witness on behalf of the United States, testified as follows:

"In 1914 I was vice-president and manager of F. T. Crowe & Company in Portland, dealing in cement and other materials, handling Santa Cruz and Standard cement, manufactured by California companies. Fred H. Muhs was the general man-

(Testimony of Fred W. Harrington.)

ager of the Santa Cruz and Standard companies. During 1914 the Santa Cruz and Standard changed their policy in regard to selling cement in Washington. They stopped selling in Washington and all the [108] Washington companies stopped selling in Oregon. A great many conferences were held in San Francisco and the change occurred after these conferences. I got my information about the change of policy from Mr. Fred Muhs at various times and at various places, sometimes by letter, sometimes by wire and sometimes by personal conversation. In the lobby of the Palace Hotel or St. Francis Hotel in San Francisco he told me that the Washington mills agreed not to go south of Salem and that the California mills would not go into the State of Washington. I tried to make an exception of the Columbia Feed & Fuel Company at Vancouver, to whom we had been selling for years, but Mr. Muhs would not permit it. This conversation was either late in 1913 or early in 1914. No statement to the effect that the Washington companies tried to get their territory extended as far south as Eugene was made to me by S. H. Cowell, W. H. George, F. G. Drum, R. B. Henderson, Frank W. Erlin, William G. Henshaw, Tyler Henshaw, George T. Cameron, Fred H. Muhs, John C. Eden, A. A. Sutherland A. F. Coats, Alexander Baillie, W. P. Cameron, R. P. Butchart or Clark M. Moore."

Thereupon a letter marked Exhibit 46, identified by the witness was offered in evidence, the witness



(Testimony of Fred W. Harrington.)

testifying that the pencil memorandum in the lower corner was made by E. G. Allen who was in the employ of F. T. Crowe & Company, quotation man, and was made in the regular course of business in the office. To the introduction of this letter the defendants objected upon the ground that the same was incompetent and irrelevant as it does not tend to establish any issue in the case, but the court overruled the objection and the defendants duly excepted, the exception was allowed [109] and the letter was introduced in evidence and read to the jury.

Thereupon the witness identified a further letter marked Exhibit 47 as a letter which came through the office in the regular course of business and the same was offered in evidence and objected to by the defendants upon the ground that the same was incompetent and irrelevant and did not tend to establish any issue presented by the indictment, but the Court overruled the objection and the defendants duly excepted, the exception was allowed and the letter was introduced in evidence and read to the jury.

Thereupon the witness identified a letter marked Exhibit 48 and the same was offered in evidence, and to this letter the defendants duly objected upon the ground that the same was incompetent and irrelevant and did not tend to establish any allegation of the indictment, but the Court overruled the objection and the defendants excepted, the excep-

(Testimony of Fred W. Harrington.)

tion was allowed and said letter was introduced in evidence and read to the jury.

Upon cross-examination the witness further testified: "Cement was shipped to F. T. Crowe & Company on consigned account. We paid freight and warehouse charges, sold the cement, deducted our commission and remitted the balance to the cement company. All accounts were carried in our name. F. T. Crowe & Company got a Commission for selling of 10 cents a barrel all the time and 20 cents a barrel in some cases. Where we sold to a dealer in the country we got 20 cents a barrel, the dealer got 10 cents and we got 10 cents. We were selling to consumers as well as to dealers and these [110] companies were selling to consumers as well as to dealers. Prior to the date of these letters, commissions had been allowed dealers in the city of Portland at various times but afterward no commissions were allowed dealers in the city of Portland. I moved away from Portland in November, 1917. In 1914 F. T. Crowe & Company were agents for both Standard and Santa Cruz but about the first of March of the year 1914 the Standard established their own agency in Portland and later in the year, in October, the Santa Cruz established their own agency, and that was the end of the concern of Crowe & Company. My connection with Crowe & Company ceased in December, 1914. The agent for the Standard was Mr. James. The agent for the Santa Cruz was Dan Maher. After the Standard established its agency we didn't handle

(Testimony of Fred W. Harrington.)

Standard and after the Santa Cruz established its agency we did no new business for the Santa Cruz. F. T. Crowe & Company had also an office in Tacoma, Seattle and Spokane as well as in Portland. Their business was about the same kind in all places. They handled cement but over there they handled Riverside. I think the Riverside Company pulled out of the state of Washington in 1914 and then F. T. Crowe & Company handled Superior or Washington cement. I tried to get a concession from Mr. Muhs in favor of the Columbia Feed & Fuel Company but he would not permit it and said, 'We are not going to sell in the state of Washington.' I objected as all the business we had in the state of Washington was in Vancouver. We hated to lose it. We may have sold a few jags of cement that went over on the North Bank road but had no dealers except in Vancouver. My recollection was the conversation with Muhs occurred late in the fall of [111] 1913 or early in 1914. I think it was in the fall of 1913, I remember it was late in the fall when I was down in California. The conversation took place in the lobby of the Palace Hotel. Mr. Muhs came downstairs with one or two other gentlemen and I asked him what had been done. I am not sure whether Mr. Hacker was present or not. He was the treasurer of F. T. Crowe & Company and lived in Tacoma. Mr. Muhs said they had fixed it up and they were going to get out of Washington and the Washington companies agreed not to sell south of Salem. At that time, when I was selling

(Testimony of Fred W. Harrington.)

cement for the Santa Cruz or Standard in the Portland market there were the Riverside Portland Cement Company, the Standard and Santa Cruz Portland Cement Companies, the Henry Cowell Lime & Cement Company, the Pacific Portland Cement Company, the Washington Portland Cement Company, the Olympic represented by Balfour-Guthrie & Company; the Superior sold a little but not much, quoted once in a while but didn't sell much. These were the only companies selling in the Portland market. All of them were more or less active. I know Aman Moore. We were not particular friends. I think we sold to the Portland Cement Company when they started to build the mill at Oswego, reinforced steel for their mill. I never had any connection with that concern or with the Oregon Portland Cement Company and never contemplated having any connection with either of them; yes—at one time in order to get a settlement of our claim for the steel for which we had not been paid someone came around with the proposition that we take so much stock. The Superior did very little business. Their agent was named Nickerson. The Pacific Portland Cement was represented by Statter, the Riverside by Charles Jones, at one time by [112] R. A. Hume & Company. I know all of these men. The Santa Cruz and Standard mills are separate but controlled by the same interests and had the same president, manager and same officers."

(Testimony of Fred W. Harrington.)

Thereupon the attorney for the United States offered in evidence transcript of the testimony of W. E. Hacker, taken upon the former trial of this case and particularly the exhibits offered upon the former trial with the testimony of said Hacker, marked Exhibits 49 to 58 inclusive, and thereupon the attorneys for the defendants objected to the introduction in evidence of Exhibits 49, 51, 53, 54, 56, 57 and 58 and to any evidence of this witness in regard to said exhibits or the matters therein mentioned, upon the ground that the said exhibits and said testimony related entirely to the business of the Washington companies within the State of Washington and not at all to interstate commerce, and objected to each of said exhibits and to all testimony in regard to each of said exhibits upon the same ground, but the Court overruled the objection, and an exception was allowed, and thereupon the testimony of said witness, Hacker, taken upon the former trial was read to the jury, wherein said witness testified as follows:

"I live in Los Angeles, am in the paving business for the Warren Brothers Company. I was secretary and treasurer of F. T. Crowe & Company from 1902 to the end of 1916, located at Tacoma, Washington. In 1913, 1914, 1915 and 1916 F. T. Crowe & Company was in the building materials business, handling cement in considerable proportions. In 1913 and 1914 they were dealers for the Superior Portland Cement Company, a Washington company, covering the territory tributary to Tacoma and to



(Testimony of Fred W. Harrington.)

the southwest. The firm also [113] had an office in the city of Portland. In the city of Portland the firm were dealers for Standard Portland Cement Company and the Santa Cruz Portland Cement Company, California companies. My business connected principally with the Tacoma office. During 1913 and 1914 beside the Superior, the Washington Portland Cement Company and the Olympic Portland Cement Company, Washington companies, were selling cement about Tacoma. The California companies were not serving that portion of Washington during those years. There was a range of prices on cement. I cannot tell you exactly what they were. They were lower in the early part of 1914 than later in 1914. The prices were raised I think about June or July, 1914."

Thereupon the witness identified a letter marked Exhibit 49, dated March 24, 1914, from the Superior Portland Cement Company to F. T. Crowe & Company at Tacoma, and the same was offered in evidence and to this letter the defendants by their attorneys objected upon the ground that the same was dated prior to the formation of the Oregon Portland Cement Company and also upon the ground that it related wholly to intrastate business. The Court overruled the objection and an exception was allowed and the letter was introduced in evidence and read to the jury.

The witness testified: "When this letter was received prices were supposed to be uniform. I know Mr. Fred Muhs. I don't know what his title

(Testimony of Fred W. Harrington.)

was. He was connected with the Santa Cruz and Standard Cement Companies—I think as sales manager. These companies are controlled by the same officers.”

Thereupon the witness identified a letter written by the witness to Fred H. Muhs, dated at Tacoma, April 10, [114] 1914, and the same was offered in evidence. The defendants objected to this letter not only because it antedated the formation of the Oregon Portland Cement Company, but also upon the ground that it does not tend to sustain any issue in the case and does not tend to show any combination but rather to invite combination, but the Court overruled the objection and the defendants excepted and the exception was allowed and the letter was introduced in evidence and read to the jury, marked Exhibit 50.

The witness further testified: “At the date of this letter the Washington mills were competing in the State of Washington and scrapping. It was our hope that they would get together subsequent to that date. I can’t say that they did.”

Thereupon the witness identified a letter dated June 1, 1914, written by the Superior Portland Cement Company, marked Exhibit 51 and the same was offered in evidence. To this letter the defendants objected upon the ground that the same antedated the formation of the Oregon Portland Cement Company, and also upon the ground that it related entirely to intrastate business. The Court overruled the objection and to this ruling the defend-

(Testimony of Fred W. Harrington.)

ants excepted and the exception was allowed and thereupon the letter was introduced in evidence and read to the jury.

The witness further testified: "At the date of that letter we were urging the Washington companies to fix the price of cement in the State of Washington. I do not know whether the prices were so fixed or not."

Thereupon the witness identified a letter written by him to Fred H. Muhs, dated July 2, 1914, marked Exhibit [115] 52, and the same was offered in evidence and introduced in evidence over the objection of the defendants on account of its date and read to the jury.

The witness further testified: "Muhs mentioned in this letter is Muhs of the Standard and Santa Cruz Company. Coats was the head of the Washington Portland Cement Company. We were dealers for the Superior. G. B. & Co. mentioned in the letter means Galbreath-Bacon & Co. When this letter was written negotiations between the Washington companies had not been completed and so far as I know were never completed. I communicated with San Francisco regarding the Washington mills because of our previous close connection with the San Francisco mills. They were not serving Washington with their cement."

Thereupon the witness identified two letters, each dated July 17, 1914, marked Exhibits 53 and 54 and the same were offered in evidence. To the introduction of these letters and each of them the

(Testimony of Fred W. Harrington.)

defendants objected upon the ground that they antedated the formation of the Oregon Portland Cement Company and upon the further ground that they related to solely business of Washington manufacturers within the State of Washington, to intrastate business and not interstate business; but the Court overruled the objection and an exception was taken to this ruling and allowed and the said letters were introduced in evidence and read to the jury.

The witness further testified: "It would seem that when these letters were received the Washington companies had completed their arrangements [116] for a uniform price of cement. I know of no meeting between the officers of the various Washington companies in San Francisco shortly prior to July 17, 1914, and had no conversation with any of the officers of the Washington companies in regard to such meeting. I am unable to say whether the price of \$1.90 f. o. b. Seattle remained the same throughout the year 1914. I think my firm handled Olympic cement in Seattle."

Thereupon the witness identified a letter written by him to Mr. Muhs dated July 23, 1914. The same was marked Exhibit 55 and offered and received in evidence and read to the jury over the objection and exception of the defendants that the letter was written prior to the formation of the Oregon Portland Cement Company.

The witness further testified: "We were not selling cement for the California companies in

(Testimony of Fred W. Harrington.)

Washington. I think the California companies withdrew from Washington in 1913. I think the Washington companies sold in Oregon subsequent to July 17, 1914, and sold as far as their rates would permit them to go. I don't know whether they sold farther south than Salem. The letters of the Washington companies quoted the same price."

Thereupon the witness identified a letter dated August 27, 1914, marked Exhibit 56 and the same was offered in evidence. To this letter the defendants objected upon the ground that it was written prior to the formation of the Oregon Portland Cement Company, and upon the further ground that it related wholly to business within the State of Washington, all companies manufacturing cement in said state, to intrastate and not interstate business, but the Court overruled the objection and the defendants excepted [117] and the exception was allowed and the letter was introduced in evidence and read to the jury.

The witness further testified. "We didn't bid upon that contract. I don't think the agreement among the Washington companies continued. We suspected it would be changed every day. When the Oregon Portland Cement Company came into the market we were out of the Portland market. The Washington Companies had eliminated their dealer."

Thereupon the witness identified letter from the Superior Portland Cement Company to Crowe & Company of Seattle, dated December 31, 1914,



(Testimony of Fred W. Harrington.)

marked Exhibit 57; also a letter from the Olympic Portland Cement Company to Crowe & Company of Seattle, dated December 31, 1914; also a letter from the Olympic Portland Cement Company to Crowe & Company of Seattle, dated January 4, 1915; also a letter from the Olympic Portland Cement Company to Crowe & Company, dated January 2, 1915; also a letter from the Superior Portland Cement Company to Crowe & Company of Tacoma, dated January 12, 1915; also a letter from the Superior Portland Cement Company to Crowe and Company, Seattle, dated February 23, 1915, and all of said letters were offered in evidence marked Exhibit 57, and to each and all of these letters the defendants objected upon the ground that the same were dated prior to the formation of the Oregon Portland Cement Company, and upon the further ground that the said letters related entirely to the business of Washington manufacturers within the state of Washington and did not relate at all to interstate commerce, but the court overruled the objection and to this ruling the defendants excepted and the exception was allowed and said letters were introduced in evidence [118] and read to the jury.

The witness further testified: "From this correspondence it appears that as all the Washington companies had their main offices in Seattle they had decided to leave no other dealers in the Seattle market and that they had adopted the policy of

(Testimony of Fred W. Harrington.)

charging the same price for cement. This policy continued until August, 1916, as far as I know. With relation to Tacoma the price at Tacoma about the time of the date of these letters was \$1.90."

Thereupon the witness identified letter from Superior Portland Cement Company to Crowe & Company of Tacoma, dated January 13, 1916; letter from the Superior Portland Cement Company to Crowe & Company dated January 13, 1916; letter from the Washington Portland Cement Company to Crowe & Company, of Seattle, dated January 12, 1916, and letter from the Olympic Portland Cement Company dated January 11, 1916, to Crowe & Company, all of which were marked Exhibit 58 and offered in evidence. The defendants objected to the introduction of said letters and to the introduction of each of them upon the ground that the same related wholly to business of the Washington companies within the State of Washington and did not relate at all to interstate business, and upon the further ground that the letters were all prior to the date upon which the Oregon Portland Cement Company placed its cement upon the market; but the Court overruled the objection and to this ruling the defendants excepted and the exception was allowed and the letters were introduced in evidence and read to the jury.

The witness further testified: [119] "These letters give the same terms for the city of Seattle and indicate that the three companies had an agreement as to price in Seattle. The situation con-

(Testimony of Fred W. Harrington.)

tinued as long as I was connected with F. T. Crowe & Company. We never heard of Oregon Cement. I don't know when it was first manufactured or whether the Washington companies then withdrew entirely from the State of Oregon. I do not know about any conferences held in San Francisco by Washington and California companies. The Standard and Santa Cruz left the State of Washington in 1912 or 1913."

Thereupon the attorney for the United States asked the witness why the Standard and Santa Cruz companies left the State of Washington, and to this question and to any evidence given in answer thereto the defendants objected upon the ground that the same was incompetent, that it could only be by written communication or hearsay.

The witness answered the question: "Before the Washington companies were started, Oregon and Washington were dumping grounds for the California companies and the California companies sold into Montana and Idaho before they met eastern competition. When the Washington cement mills were started the California mills were naturally restricted as to that territory which the Washington mills could supply cheaper by reason of freight rates. At that time the California companies were still selling in eastern Washington up to Spokane. The rates were not such that the Washington companies could get into Eastern Washington; then mills up in Eastern Washington were started, the Inland and the International and

(Testimony of Fred W. Harrington.)

they crowded the California mills out. Portland was the last place that the California mills could ship into as a dumping [120] ground. That was the reason why prices were so absolutely impossible to maintain because of the conflict between the dealers. The dealers were urging the cement companies to get together and maintain prices because every dealer has a hunch that he is a little better salesman on an even break than the other dealer. After the Washington mills came into existence the California mills up to a certain point continued going into Washington, and there was a fight between all the mills."

Upon cross-examination the witness further testified: "By dumping ground I mean that any California company that had a surplus would seek out a place of least resistance and sell it in at the best price they could get, without regard to the price they sold for and the territory where they manufactured it. We were urging the manufacturers to agree on some price which could be maintained so that the dealers would have the same price to sell it. This would have been advantageous to every dealer and to every consumer. A stable price, in my judgment, was to the interest of both dealers and consumers, and also to the interest of the manufacturer. Uniformity of rates in a commodity like cement is, in my judgment, as important as uniformity of rates in freight and to the benefit of the public at large. We used to hope that the manufacturers would get tired of the fight in price

(Testimony of Fred W. Harrington.)

and maintain a stable price. If both strong and weak manufacturers kept fighting prices the weak one would go to the wall, leaving the strong one. These letters dated January, 1916, offered in evidence show a difference in price at Seattle and Tacoma. This is due to the fact that they were still selling through [121] dealers in Tacoma, allowing a commission of 15 cents a barrel, and in Seattle were selling direct to the consumers. At times States and Counties were given a less price than the public at large. The desire of the dealers was to have a stable price at which they could sell and we wished the dealers made to resell at a certain price to prevent the dealers from giving away a part of their commission in order to effect a sale. In 1914 as far as I know the California companies had withdrawn from the Washington field. The fight in Washington was between the Washington mills, caused by the coming into the market of the Olympic mill. My idea was that when a settlement came between these mills if the California companies were in the market they would have to be considered. At the date of my letter, April 10, 1914, we were selling Superior cement and these people would not bill us cement to compete with the prices quoted by the dealers in Washington and Olympic cement, saying that the prices were below the prices they desired, so that we were practically out of the market as dealers and so that the Superior was not competing, in other words. In the letters dated January, 1916,



(Testimony of Fred W. Harrington.)

marked Exhibit 58, cement is quoted at 5 cents a barrel lower than in the letters of July 17, 1914, marked Exhibit 53. No, I am mistaken, the price in July, 1914, was 10 cents less than the price in January, 1916; the difference is in the commission and sacks."

Upon redirect examination the witness further testified: "In 1914 they allowed a reduction of 10 cents per sack; the price quoted in 1914 would make the net return to the factory \$1.75; the price in 1916 would make \$1.85 net to the factory and in Seattle the price was 25 [122] cents higher in 1916 than in 1914. The freight rate to Tacoma and Seattle was the same."

**Testimony of A. A. Sutherland, for the Government.**

Thereupon A. A. SUTHERLAND was called as a witness on behalf of the United States and testified as follows:

"I am treasurer and sales-manager of the Superior Portland Cement Company and live in Seattle. I have been in this business for ten or eleven years."

Thereupon the witness identified the letter written by him to Balfour-Guthrie & Co. of Portland, Oregon, dated October 5, 1914, marked Exhibit 59; and a letter written by him to one Hall at Eugene, Oregon, dated October 5, 1914, marked Exhibit 60; and a letter written by him to Gamble, general manager of the St. Paul & Tacoma Lumber Company at North Yakima, Washington, dated June

(Testimony of A. A. Sutherland.)

11, 1914, marked Exhibit 61; letter written by him to Foster & Co. at Hoquiam, Washington, marked Exhibit 62, and the same were offered in evidence and read to the jury over the objection and exception of the defendants on account of the date of said letters.

Upon cross-examination the witness testified: "The reason for the change at Aberdeen was that the account was not satisfactory. Payments were not proper and too much fault was found with prices. This was the trouble with Lebo. We consulted Balfour-Guthrie & Co. regarding Foster and the Washington mills regarding Foster because he was the only party in Hoquiam who handled cement and the only logical person to give it to."

**Testimony of Cecil H. Bacon, for the Government.**

Thereupon CECIL H. BACON was called as a witness on behalf of the United States and testified as follows:

"I live in Seattle and am at present manufacturing. In 1914 and 1915 I was secretary and treasurer of [123] Galbreath-Bacon & Co. and continued with them until January 1, 1918. They handled hay and grain and building material, including cement."

Thereupon the witness identified certain letters marked Exhibit 63 as letters received by Galbreath-Bacon & Co. and the same were offered in evidence and to said letters and to each of them the defendants objected upon the ground that they were written

(Testimony of Cecil H. Bacon.)

prior to the formation of the Oregon Portland Cement Company, and upon the further ground that they related to the business of the Washington cement manufacturers in the state of Washington and did not relate at all to interstate business, but the Court overruled the objection and the defendants excepted and the exception was allowed and the said letters were read to the jury.

Thereupon the witness identified letter written by Fred R. Muhs to Galbreath-Bacon & Co. marked Exhibit 64 dated June 16, 1914 as one received by him in the regular course of business, and the same was offered in evidence and read to the jury over the objection of the defendants and their exception on account of the date of the same.

Thereupon the witness identified letter from the Olympic Portland Cement Company dated July 17, 1914, marked Exhibit 65, and the same was offered in evidence as having been received by the witness in the regular course of business and the same was offered and received in evidence and read to the jury.

Thereupon the witness identified certain papers as passing through their office in the regular course of business and the same were marked Exhibit 66 and introduced in evidence and read to the jury.  
[124]

Thereupon the witness identified certain papers as having passed through their office in the regular course of business and the same were marked Ex-

(Testimony of Cecil H. Bacon.)

hibit 67 and introduced in evidence and read to the jury.

Thereupon the witness identified certain papers as having passed through their office in the regular course of business and the same were marked Exhibit 68 and the same were introduced in evidence and read to the jury.

Thereupon the witness identified a certain letter as having been received in the regular course of business and the same was marked Exhibit 69 and introduced in evidence and read to the jury.

Thereupon the witness identified a certain letter marked Exhibit 70 and the same was introduced in evidence and read to the jury.

Thereupon the witness identified a letter and the same was marked Exhibit 71 and was introduced in evidence and read to the jury.

Thereupon the witness identified a certain letter and the same was marked Exhibit 72 and the same was introduced in evidence and read to the jury.

Upon cross-examination the witness testified: "I don't know where the letter of March 1, 1916, referred to and the letter signed by Aman Moore is. I presume this letter came from the Portland office. I presume it was in our files and requisitioned by the Government. The Government had a special agent who went through our files and took what he wanted. I don't remember anything about the contents of the letter of March 1, 1916. It seemingly was a letter written by [125] me to the Oregon Portland Cement Company. It was written

(Testimony of Cecil H. Bacon.)

about the same time that those letters were written in one of which I say that Coats had ditched me. The telegram of June, 1916, was sent to the Oregon Portland Cement Company at the instance of Mr. Aman Moore. He was in the office at the time it was sent. He saw it before it was sent. Mr. Aman Moore was in my office soon after the answer to that telegram came from someone in Portland. I did not know at the time why he asked me to send the telegram. I naturally would have supposed from the correspondence which I had with Aman Moore before that he would be the party to deal with. I knew nothing about his relationship with the Oregon Portland Cement Company. At the time we were seeking cement and willing to comply with his request to wire for a price. He didn't tell me any circumstances at all as far as I remember. The telegram would not have been sent if he hadn't called. I don't remember about his saying anything about having any trouble with his codirectors. He may have told me. I don't know anything about his business in Seattle. He took a copy of the telegram and also of the answer. In some of the telegrams reference is made to Blue Cross brand cement. It is the same as Santa Cruz cement. When I wrote that Coats had ditched us I meant that he would no longer supply us with cement to advantage."

Upon redirect examination the witness testified: "When the telegram of June was sent at the suggestion of Mr. Moore I was seeking cement and if



(Testimony of Cecil H. Bacon.)

I could have bought it would gladly have become a purchaser. I was seeking cement upon advantageous terms."

Upon recross-examination the witness testified: [126] "In the letter from Mr. Muhs to me dated June 16, 1914 there is a reference to some patents for some lime, rock and clay properties back of Everett. I was thinking of going into the business at a later date. I don't know what is meant in the letter by the California price standard. I had invited Mr. Muhs to come out sometime and see the property that we had and he said he would come. I was thinking about starting a cement plant myself."

Upon redirect examination the witness further testified: "I was seeking to buy cement at an advantageous price. We couldn't afford to buy the Oregon brand at the price quoted. If their cement had been O. K. and the price quoted had been under the cement market we would have bought from them. I was really trying to buy cement at a good figure."

Upon recross-examination the witness further testified: "I could only buy Oregon Portland cement or handle it if I could get it at a figure lower than that at which I could buy other cements in Seattle or Tacoma. The freight rates from the Washington plants to Seattle were lower than the rate from Portland to Seattle and if I got the cement from the Oregon Portland Cement Company and

(Testimony of Cecil H. Bacon.)

not from the Washington mills it would have to be sold at the Oregon mill at a lower figure than the Washington mills were getting for it at their mills." [127]

**Testimony of G. C. Nickerson, for the Government.**

Thereupon G. C. NICKERSON was called as a witness on behalf of the United States and testified as follows:

"In 1914, 1915 and 1916 I was the manager of the branch office of the Washington Portland Cement Company in Portland, Oregon. Mr. A. F. Coats was the president of the company. I sold cement for them for about two years. The last part of the third year, 1916, I was not selling cement. I quit before the Oregon Portland Cement Company began selling. I was notified January 1, 1916, to close up our contracts, notified by Mr. A. F. Coats, and from that time on we just finished up a few little contracts we had. While I was manager we didn't sell farther south than Salem. I have remained in Portland ever since 1916 but was not in the employment of Mr. Coats after 1916. I know Mr. Clark M. Moore. I saw him in his office in the Wilcox building at the time that he received a telegram about the price of cement in Seattle. The telegram was from Galbreath-Bacon & Co. I believe, asking him to quote in Seattle. Mr. Clark M. Moore asked me what the price was and I told him I didn't know, that when I wanted to know I found out by asking them what their price was

(Testimony of G. C. Nickerson.)  
in Seattle. I think Mr. Clark M. Moore phoned,  
I suppose to Seattle. That is all that he said—I  
do not know to whom he phoned.”

On cross-examination the witness testified: “I was employed by the Washington Portland Cement Company in 1914, 1915 and 1916. Before that time I worked for the Henry Cowell Lime & Cement Company. Under Mr. Coats I had general charge of the business in Oregon. I had very little to do with any business in Washington; only in Washington at one place—Vancouver. About the first of [128] January, 1916 Mr. Coats notified me we would close up our present contracts. I think our market was limited to Salem on the south when I first went in the employ of the Washington Portland Cement Company. This company was in business here before I took charge. The agent’s name was Rochester. I paid no attention to any business in Washington except at Vancouver. I sold mostly in Portland, Astoria, Tillamook and along the Columbia River. I got my orders from Mr. Coats. When I was in Mr. Clark M. Moore’s office I was merely calling on him in a friendly way and had no business with him. I didn’t sell cement in Seattle and didn’t know the price there nor care about it. I don’t think we sold in Vancouver from Portland after I quit dealing in Oregon. When I quit the business was on the decline.”

**Testimony of John C. Eden, for the Government.**

Thereupon JOHN C. EDEN was called as a witness on behalf of the United States and testified as follows:

“I am a manufacturer of Portland cement. I am president of the Superior Portland Cement Company, have been since its organization in 1907. The capitalization of the Company is two million dollars now. We acquired the Washington Portland Cement Company a year ago last December. That is the company of which Mr. Coats is president. I don't know what the capitalization of that company was. I think about a million and a half. I think I know all manufacturers of Portland cement on the Pacific Coast. I have frequently met them in San Francisco. At these meetings between 1914 and 1916 and at meetings held at other places there were discussions as to prices charged and territory served by the various mills. During the year 1914 there was quite a number of changes in prices, but I [129] do not recall any particular date upon which such changes took place. I remember a contract made by the International Cement Company at Spokane to supply cement for the interstate bridge. I think I am familiar with all the circumstances of that contract.”

Thereupon the witness identified a letter dated April 18th and a letter dated April 24th attached to the same, together as Exhibit 74, and the same were offered in evidence. To the introduction of this evidence the defendants by their attorneys objected upon the ground that the letters antedate the

(Testimony of John C. Eden.)

organization of the Oregon Portland Cement Company, and upon the further ground that the subject matter of the letters does not tend to sustain any allegation in the indictment and is incompetent and irrelevant. At the same time the witness identified a file pertaining to the Interstate bridge cement contract and the same was offered in evidence marked Exhibit 75 and to this file the defendants duly made the same objection upon the same ground. Thereupon the court overruled the objections and the defendants excepted and the exception was allowed and the said exhibits 74 and 75 were introduced in evidence and read to the jury.

The witness further testified: "F. R. Muhs was the manager of the Standard and Santa Cruz Portland Cement Companies. They are California companies. W. P. Kinney, was then vice-president in charge of traffic of the Great Northern Railroad. At one time I was associated with the railroad. Mr. Skinner referred to in the telegram was then and now is traffic manager of the North Bank Railroad in Portland. I went to Delmonte, California and saw Mr. Hill and conferred with him about this rate mentioned in this correspondence. Mr. Calkins [130] was then traffic manager of the Chicago, Milwaukee & St. Paul. Kinney is the same Kinney I referred to a month ago. Mr. Woodworth was then vice-president and in charge of the traffic of the Northern Pacific. At that time I had the Chicago, Milwaukee & St. Paul, Great Northern and the Northern Pacific interested in this



(Testimony of John C. Eden.)

matter. The words 'Engstrom wiring' have nothing to do with the interstate bridge; it relates to some other matter. A. A. Sutherland was and now is my sales-manager. He was a witness on the stand this morning. Gilman was at that time president of the North Bank Railroad in Portland. Alex Baillie is managing director of the Olympic Portland Cement Company, a member of the firm of Balfour-Guthrie & Company. They are managers for the Olympic Portland Cement Company. The contract with the International to supply the cement for that bridge was assigned to our company. We paid nothing for the assignment—it was never considered. I have seen Exhibit 41 and wrote the answer indicated on the back of that exhibit. That letter does not refresh my memory in any respect. It contains merely the reason I gave him for not paying a commission that I didn't think he was entitled to. I know Clark M. Moore, have known him since January, 1914. I had a long distance talk with him over the phone in the month of June, 1916, in connection with a telegram that he said he had received from Galbreath-Bacon & Co., of Seattle in regard to the price of cement. He asked me if they were dealers and what our price was in Seattle. I don't recall what our price was."

Thereupon certain papers were identified by the witness, marked Exhibit 76 and offered in evidence. To these papers and to each of them the defendants objected [131] upon the ground that the papers had to do entirely with promotion work and were

(Testimony of John C. Eden.)

irrelevant as they did not tend to show any allegations set forth in the indictment. The Court overruled the objection and an exception was allowed and the papers were received in evidence and read to the jury.

The witness further testified: "When I spoke of northern mills I meant Olympic Washington and Superior. They were the Washington companies."

On cross-examination the witness testified: "The letters passing between me and Mr. George relate to the Portland Cement Association, an association composed of all cement manufacturers in the United States and Canada. It had a constitution and by-laws; I have a copy of it."

Thereupon the witness produced the copy and the same was offered in evidence and marked Defendants' Exhibit 1 and read to the jury.

The witness further testified: "I was a member of the executive committee in 1914. I may have been a member of the committee for two years but I think for only one year. No, I was a member of the committee in 1916. Meetings of this association were held two or three of them in San Francisco, but usually in New York and Chicago. At the meetings held in San Francisco the matter of establishing a branch association in Portland was under discussion. Some of the member companies on the Pacific Coast objected to paying three-fourths of a cent a barrel and having all the money spent in National advertising. We felt that

(Testimony of John C. Eden.)

most of the money to be contributed out here should be spent in our own [132] territory. I asked the general manager to call a meeting in San Francisco, for the purpose of discussing the establishment both of that and an engineer office in Portland. This meeting was called and held in the early part of April, 1916. Mr. Efeck was the president of the concern and Mr. Beck the general manager. Mr. Beck attended and not Efeck. Mr. Bristol of Salt Lake, Paddy Moran of Salt Lake, Mr. Clark M. Moore, Mr. Coats, the two Camerons, Fred Muhs and myself and Mr. Beck, the manager, attended that meeting. Mr. Clark M. Moore represented the Cement Securities Company of Colorado and Montana. At that meeting it was agreed to reduce the dues of the Coast members to half a cent a barrel and to spend at least one-half the money that was contributed in our own territory. I don't remember the exact percentage. There never was any meeting of the association where the question of sales was ever discussed and at no meeting that ever took place that I attended was there any discussion in regard to the territory in which cement should be sold. Mr. Clark M. Moore at that meeting represented the Boettcher interests. Mr. Butchart was not at that meeting. He was not a member of the association. I think his company came in about a year ago. The Oregon Portland Cement Company was not a member of the Association at that time. Letters passing between me and Mr. George were in connection with matters

(Testimony of John C. Eden.)

which were under discussion at that meeting. The party mentioned in my letter to Mr. George had nothing to do with that meeting. There was a meeting about two months before April 18, 1916. It was probably a meeting to discuss the same matters. I was at that meeting. Mr. Clark M. Moore was not, nor was [133] Mr. Butchart. Mr. George was at the meeting if Al Coats wasn't there and Al Coats was there if Mr. George wasn't there. They never attended a meeting together. I don't recall what was done at that meeting, but do not recall that anything was done regarding territory or prices or the manner in which cement should be sold or where it should be sold. Mr. Beck was the manager of the association. Mr. George as well as myself was disgruntled and thought of leaving the association because of the manner in which the moneys we were contributing were being spent. We felt this money should be spent locally on the Coast here. There was no trouble between me and Mr. George or between any other members of the association in regard to any other matter. Some of us had threatened to withdraw from the Association and the real purpose of the meeting was to consider the advisability of a Coast association instead of a general association, but no Coast association was formed after that meeting. We had had one probably three years prior to that. Neither Mr. Butchart nor Mr. Clark M. Moore belonged to that Coast Association. Mr. George did. Prior to the correspondence regarding the bridge matter

(Testimony of John C. Eden.)

there had been a meeting between the cement manufacturers and the railroads at which freight rates had been fixed and it had been agreed that these rates should not be changed without a discussion being first had. The proposed rate that they were putting in was to be put in without any discussion of it at all. This rate was a rate from a place called Irwin, a station on the Northern Pacific near Spokane. It was to cover Portland but my great concern was that it would also have to be duplicated to Seattle and Tacoma and that is why I fought [134] it so hard. From my knowledge of railroad business I knew that a rate could not possibly be in effect to Portland, the same distance, and not have the same rate to Seattle. It was not intended that the rate should apply eastbound, but only westbound and it was not to apply to intermediate points at all. At that time the rate applied only to Portland. The Milwaukee & St. Paul would have duplicated the rate and so would the Great Northern to Seattle. That has always been the practice. We were operating our plant about three months in the year at that time and with seven cement companies, including ours, competing for business and a small amount of business to go around I was naturally concerned about any move that would bring any more competition on our backs. The Eastern Washington companies were scrapping worse at that time than we did in 1914. They made up their minds as we did later on that if they kept it up they would



(Testimony of John C. Eden.)

both go broke. I was never much interested in that connection in the Spokane company. Those mills were fighting all the time. The reason Irwin gave me for selling this cement to the Bridge Company was that the California fellows were invading their territory in Eastern Oregon and shipping cement up close to Spokane. The making the price to the Bridge Company was by way of reprisal for that. I don't know whether Oregon Portland Cement Company was organized at the time of this bridge fight or not. They were not selling cement at that time and I don't think they took any part in this fight. Neither Mr. Butchart or Mr. Clark M. Moore ever talked to me about this fight. Mr. Butchart never attended any meetings of the association or of the executive committee in San Francisco or elsewhere when I was present. I never meet a cement man [135] that I don't talk to him about general conditions in trade, but Mr. Butchart was never present when I talked about cement prices or anything else at any time or place. I have known him for 10 years. Until he became connected with the Oregon plant he never took any part in cement business that I know of on the Pacific Coast and after he became connected with the Oregon plant I know of nothing at all that he did with the business of cement manufacture and sale on this Coast. The letter from myself to Mr. Aman Moore dated March 26, 1916, refers to the promotion of concrete paving and has nothing to do with the cement business except the promotion of con-

(Testimony of John C. Eden.)

crete pavement. It is the business of cement manufacturers to promote the use of cement. Our principal business is the sale of cement for road and street paving. The work done for promoting the use of cement by the Association consists of sending out men to convince people that concrete pavement is the best type and educating people to use cement in other things. Nothing ever came of it until very recently. The Association issued literature for the purpose of promoting the use of cement."

Thereupon the witness identified certain papers as publications of the Portland Cement Association, and the defendants offered, not the contents of these papers but the fact that such papers were issued, for the purpose of showing the character of the business done. Thereupon the United States objected to the introduction of the papers for any purpose as immaterial and incompetent and the court sustained the objection, and to this ruling the defendants excepted and the exception was allowed.

The witness further testified: [136] "The Association of which I speak was the Portland Cement Association, a National Association. I don't recall what I was doing in San Francisco at the time that Mr. George gave the party referred to in the correspondence. Whenever I go to San Francisco I call on all the cement men but I don't recall any meeting being had at that time, that is to say about two months prior to April 18, 1916. If there was a meeting at that time it was for the purpose of talk-

(Testimony of John C. Eden.)

ing over promotion matters, concern paving matters, particularly in the State of Oregon. Nothing occurred at all if there was such a meeting in regard to the price of cement or the territory in which cement should be sold on this Coast or elsewhere. If there was a meeting at that time Mr. Butchart was not present nor Mr. Clark M. Moore. I don't know who was present at that meeting if there was a meeting about to months prior to April 18, 1916. I have not the letter dated April 15, 1916, from Mr. Aman Moore. I do not recall what it contained. Reading my letter I infer that it has to do entirely with the promotion of concrete in Portland and Oregon generally. This expression in my letter in which I say 'inasmuch as we will probably not participate in the cement tonnage in the State of Oregon' refers to the fact that we had made up our minds to withdraw from the State of Oregon and made it up on the starting of the plant at Oswego. My reason was that it would not be possible for me to market cement in Portland and which would be the largest market for the Oregon Portland Cement Company, right under the nose of their plant with only a switching charge to pay against my freight of 81½ cents. Nothing was ever said between myself and Mr. Clark M. Moore or between myself [137] and Mr. Butchart or between myself and any representative of the Oregon Portland Cement Company which made me consider the advisability of giving up the Oregon market. It was my own notion that if I kept out of Oregon I might be left

(Testimony of John C. Eden.)

alone in my own territory. My business in Oregon had always been very small and unprofitable. My company had a capital stock of two million dollars and a bonded debt of one million two hundred and fifty thousand dollars, a total capital of a little more than three million dollars. It was organized in 1907 and began to sell cement about the spring of 1908, largely west of the mountains in Washington, some in Oregon, but I don't think we came into Oregon until about 1910. We never shipped any cement to California. Until the Eastern Washington plants were put in operation we got as far east as Spokane. After these plants got into operation we have never attempted to go beyond the line where the freight rates meet—about Yakima, I think. In 1909 we marketed some cement in British Columbia. There was a shortage that year on the Coast except in Washington but we didn't market any cement in British Columbia after that year. We quit because the market wasn't profitable. There was a duty against us of about 60 cents a barrel and a dumping act which would have made it about as much more. We left the Eastern Oregon market as we were driven out by the new plants which had been erected for that territory and which could drive us out on account of their freight rates. I think in 1916 our freight rate to Portland was about 81½ cents a hundred, about 32 cents a barrel. Our freight rate to Seattle and Tacoma about 5 cents a barrel and I think the freight rate from Portland to Seattle and Tacoma was the [138]

(Testimony of John C. Eden.)

same as from our place to Portland. North of Woodland our rate was lower than the rate of the Oregon mill. The freight rate on cement from California to Portland, Seattle and Tacoma ranged from \$1.00 to \$1.50 a ton, averaging about \$1.25 a ton. This was the rate by water on tramp steamers. I have never at any place either alone or with anyone else had any talk with Mr. Butchart or Mr. Clark M. Moore in regard to my withdrawing from the Portland market. I have never had any talk with Mr. Butchart or Mr. Clark M. Moore at any time or place nor with anyone when they were present or either of them were present in regard to the time when I would sell cement in Oregon, nor in regard to the interstate bridge matter. We were not interested at that time. I never had any talk with Mr. Butchart or Mr. Clark M. Moore at any time or place either when they were alone or in connection with anyone else in regard to the price at which the Oregon Portland Cement Company would sell the product of their mill either in Washington or in Oregon, nor whether they would go to Washington to sell cement there. They did go to Washington, however, and cut our prices there. All I know about the conversation over the phone with Mr. Clark M. Moore in June, 1916, is that he called me up to know the price of cement in Seattle. I do not know how it happened that he called me up, except the statement of Mr. Nickerson on the stand in this case. We always find out the price at which cement is selling in any market be-



(Testimony of John C. Eden.)

fore we make a quotation in that market, and if Clark M. Moore didn't find out the price of cement in Seattle before he made a quotation there he should have had his head taken off. I know nothing about the inquiry coming from Galbreath-Bacon & Co. except that he asked me if they were dealers." [139]

Upon redirect examination the witness testified: "I always find out the prices in the market where I am selling or where I am going to sell. As a rule I do not quote a higher price if I expect to make a sale. I have never been able to get a higher price than the other fellow gets. I don't think I sold in Portland after the Oswego plant came in. This was in part on account of the disadvantage that I had in freight rates, but my principal reason was that I wanted to protect my own market by staying out of here, which I thought I could do. I continued to sell cement in Vancouver. The freight rate to Vancouver was the same as to Portland, but we had a little pride about selling cement any place in Washington regardless of what the freight rate was. There were two or three meetings of the Portland Cement Association in San Francisco, one of which was on the 11th of April, 1916. I cannot give the dates of the other meetings; they probably occurred both before and after April 11, 1916. There were probably five or six meetings in San Francisco every year, either of the Cement Association or general meetings, but of the Cement

(Testimony of John C. Eden.)

Association there were very few; probably half a dozen altogether in the period of three years. There were other meetings that were not Association meetings that had to do with the same things as Association meetings. They were meetings in which we discussed matters of the promotion of concrete pavement and the additional uses of cement in other lines. I think that there were as many of such meetings as of Association meetings. April 11th is the only date that I can give of any Association meeting. Mr. Butchart took no part in the cement business on the Coast until after the Oregon Portland Cement Company came in,—I should say [140] took no part in the business south of the border. He had a plant about 150 miles across the Canadian border from Seattle and about the same distance from our plant. I don't know anything about his being a stockholder in the Washington Portland Cement Company. We bought the property but not the stock and I don't know who were the stockholders. I was one of the defendants in this case."

Upon recross-examination the witness further testified: "I never met Mr. Butchart or Mr. Clark M. Moore at any meetings in San Francisco which were not association meetings or at any association meetings. I think at meetings which were not association meetings we discussed prices at which cement should be sold. At none of these meetings was there ever present any representative of the

(Testimony of John C. Eden.)

Oregon Portland Cement Company. When I find out what the market price of cement is at any place I wouldn't expect to sell our cement at that place at a higher price than any other manufacturer. It is pretty hard to say what the market price of cement is, whether the actual price at which it is sold or whether the price the Company sent out sometimes in the way of circulars. I should say the market price would be the price at which cement is actually being sold, and when I spoke of the market price at Seattle I meant the price at which Washington companies were selling cement in that territory; that is the price which I gave Mr. Clark M. Moore. At the time that I talked with him I think the list price was being adhered to pretty firmly. There was usually a price at which cement companies were selling which I called the market price. This price was established a couple of years before that by an announcement [141] which I made to the other companies that we were going to get a price of \$1.90 net of sacks or close up our plant and keep it closed. We couldn't survive under the prices which we had been getting for five or six months previous to that time. This announcement was made over the telephone to Mr. Coats and probably to Mr. Cameron. I made that announcement in the hope that they would follow me because if we continued to sell at the rate at which we were going at that time we couldn't have lasted financially more than two or three

(Testimony of John C. Eden.)

weeks longer. Cement was being sold at a material loss."

Upon redirect examination the witness testified: "I have seen Mr. Butchart in San Francisco, but not in the year 1916. I think it was two or three years prior to that time, about the time that he first became connected with the Oregon mill. I met Clark M. Moore in San Francisco at that association meeting. That was the meeting of the Portland Cement Association and had nothing to do with the fights touching the interstate bridge contract."

Upon recross-examination the witness further testified: "My attention is called to some correspondence between me and Mr. Muhs regarding a telegram. I would say that in addition to the Association we have a little association, for instance on the Coast all of the manufacturers on the Coast contribute to a fund to promote particularly concrete pavement or any kind of work that consumes cement. In addition to this three-fourths of a cent which we paid to the Association we contributed two or three or four cents a barrel to take care of local [142] promotion, and I think the principal activity of this local promotion is the inspection of pavement, our experience being that the average contractor will steal cement on us, the pavement will go to pieces and concrete pavement is discredited on account of it. So we probably spend four-fifths of our secondary contribution for the inspection of concrete pavements as it is being

(Testimony of John C. Eden.)

laid. This correspondence had reference to that. A contractor who had taken a contract in Tillamook had the reputation of being crooked and I wanted to warn Mr. Muhs against him. Our fight was particularly warm in Oregon. The Warren Brothers were doing everything they could do to discredit the concrete type of pavement and I wanted to put Mr. Muhs on his guard. Generally speaking we never can get a competent man at the price the city or county is able to pay, so we generally had one of our men designated and if we could get him and if the county would pay \$75.00 and the man demanded \$150.00 we would pay the other \$75.00 in order to get a competent man to inspect the work and see that the specifications were followed. We didn't take contracts ourselves. We wanted to see that the specifications were properly carried out. Mr. Muhs' letter is on the same subject and he suggests that the inspector should be furnished by the Association. That is a part of what we call our promotion campaign. We feel if we lay good pavement we will be able to lay another one."

Upon redirect examination the witness testified: "I had a copy of the constitution of the Portland Cement Association because I was asked some question about it on the last trial. I brought it entirely on my own motion." [143]



**Testimony of W. P. Cameron, for the Government.**

Thereupon W. P. CAMERON was called as a witness for the United States and testified as follows:

"I represent Balfour-Guthrie & Company of Seattle, agents and managers of the Olympic Portland Cement Company, and have done so since the factory started in June, 1913. The Olympic Portland Cement Company has no offices in this country at all with the exception of Balfour-Guthrie & Company who are agents and general managers. The affairs of this corporation are entirely in the hands of Balfour-Guthrie & Company of Seattle and Balfour-Guthrie & Company of Portland has nothing to do with this Company. We did sell Olympic cement in the state of Oregon but withdrew from Oregon or decided to withdraw in the beginning of 1916. Prior to that time we restricted our territory in Oregon in 1914 to Salem on the south. This was discussed with the Superior and Washington companies and was a matter of controversy with the northern California mills. I was in San Francisco in January, 1916 and again in April, 1916. I saw Mr. Butchart in San Francisco in April, 1916. I met Clark M. Moore there at that time. I know Mr. C. T. W. Hollister,—I have known him since about that time. I think I heard that he had been made sales-agent or traveling agent for the Oregon Portland Cement Company, and my recollection is that some of the dealers in southwestern

(Testimony of W. P. Cameron.)

Washington had told me that he was canvassing that territory for cement business. This matter was probably mentioned at some of the meetings between myself, Mr. Coats and Mr. Eden. I think this information came to me before I saw Mr. Butchart in San Francisco. I mentioned it to Mr. Butchart that I heard that the Oregon company was soliciting business in southwestern Washington and I inquired if it was the policy [144] of that Company to continue soliciting business in that territory."

Thereupon a letter, dated August 4, 1916, marked Exhibit 78 and certain other papers marked Exhibit 79, were identified by the witness and offered in evidence by the United States, and to this letter and these papers the defendants objected upon the ground that the same are not competent or not relevant as they relate entirely to business within the state of Washington and not to interstate commerce, but the court overruled the objection and the defendants excepted and the exception was allowed and the said exhibits were introduced in evidence and read to the jury.

Upon cross-examination the witness further testified: "The Olympic Portland Cement Company is a corporation organized in London and has no offices in this country but is run by Balfour-Guthrie & Company of Seattle as agents. It started in business in June, 1913. I think I was in San Francisco in April, 1916 and met Mr. Butchart there.

(Testimony of W. P. Cameron.)

I was down at the Association meeting about which Mr. Eden testified and it was a meeting of the Portland Cement Association, the national association. It was at that time that I met Mr. Butchart. He did not attend that meeting. In so far as I am aware he was not a member of the Association at all. I never did attend any meeting with Mr. Butchart. I never saw him at any meeting. Mr. Clark M. Moore attended that meeting, representing the Cement Securities Company of Denver. That Association has a constitution and by-laws which have been offered in evidence and read. I think we joined that Association about 1915. I was in San Francisco in January, 1916 upon other business [145] for the firm of Balfour-Guthrie & Company. I was not there for any conference with other cement manufacturers but I called upon the representatives of all the cement manufacturers I believe. To my recollection there was no meeting of the Cement Association at that time. As far as I remember there was a general discussion about the best way to go about promoting the use and sale of cement and finding avenues for consumption of it, principally with the idea of promoting good road paving. There was no discussion at any meeting in regard to the territory in which any company should sell cement or the prices at which it should be sold and these matters never came before any Association meeting. I saw Mr. Butchart at the Palace Hotel, met him casually. I don't think I had any talk with him further than I have

(Testimony of W. P. Cameron.)

said and I never met him at any meeting of the Association or at any meeting of cement people in California or elsewhere. I never met Mr. Clark M. Moore at any meeting other than the Association meeting in April, 1916. I had no talk with him at that time. I did not know that he was to have any connection with the Oregon Portland Cement Company. Neither at that meeting nor at any other meeting was there any discussion of the affairs of the Oregon Portland Cement Company. I think it was in 1914 that we limited our territory in Oregon to Salem and points north of Salem. Mr. Butchart had nothing to do with this nor did Mr. Clark M. Moore, nor did the Oregon Portland Cement Company or any of its officers. This limitation of territory was the result of a controversy between the western Washington mills and the northern California mills. The northern California mills thought we should stay north of Salem and I know practically forced [146] us to do so. We decided to withdraw from doing business in Oregon in the beginning of 1916. This was largely the result of more threats on the part of the northern California mills. Neither Mr. Butchart nor Mr. Clark M. Moore or the Oregon Portland Cement Company had anything to do with this. I met Mr. Hollister many years ago when he was selling Ideal cement manufactured in Denver or some place in Colorado. I may have been mistaken about Hollister having personally canvassed southwestern Washington. This may have been done by

(Testimony of W. P. Cameron.)

mail but I think it was done before I met Mr. Butchart in San Francisco in April, 1916. Mr. Butchart talked as if he didn't know anything about it and was entirely noncommittal—made no statement one way or the other. While we were in business in Oregon our business was probably 20% of our total tonnage. It never was very profitable. We sold through Balfour-Guthrie & Company of Portland. I never had any talk with Mr. Butchart at any time in regard to this division of territory in Oregon nor did I have any talk with Mr. Clark M. Moore of this character. I never had any talk with Mr. Butchart or with Mr. Clark M. Moore about our withdrawing from Oregon. In talking with other manufacturers, Washington or California, the fact that the Oregon Company was going to start up may have been discussed but that was as far as anything was said. Nothing was said in regard to the territory in which or the prices at which the Oregon Company should sell its product. Neither Mr. Butchart nor Mr. Clark M. Moore or the Oregon Portland Cement Company had anything to do with the letters passing between us and Foster & Company. There was an understanding about this between ourselves, the Superior and the Washington mills but with nobody else. We had had [147] an agent at Grays Harbor named Lebo & Company who had proved unsatisfactory and when we got an opportunity to get Foster & Company we were glad to have them as Balfour-Guthrie & Company did lots of other



(Testimony of W. P. Cameron.)

business selling fire brick and salt and all kinds of stuff like that to Foster & Company. The capital stock of our Company is \$1,200,000.00 in stock and \$600,000.00 in bonds, the capacity of our mill about 2000 barrels a day. It has not been increased since it was built. We have sold entirely in western Washington except during the period that we were selling in Oregon. We never have sold in California and we sold in Oregon only in western Oregon, never sold in British Columbia; sold in eastern Washington as far as Yakima and Wenatchee. Beyond those points the freights were in favor of the eastern Washington mills. Freights affect the market in this way. We set our price at our mill for our cement and when the freight rates will permit us to sell at a point carrying a certain rate from our mill we sell and if we can't go any further we have to stop. This rule is true of the cement business generally."

On redirect examination the witness further testified:

"During 1916 we delivered cement in Portland to take care of our orders and commitments but did not do any new business. We merely fulfilled existing contracts and commitments. We sold a little in Vancouver, Washington and have continued to sell there ever since."

**Testimony of T. J. Elliott, for the Government.**

Thereupon T. J. ELLIOTT was called as a witness for the United States and testified as follows:

"I reside in Auburn, Washington, am in the hardware business. We used to handle building material in [148] the way of cement and stuff like that, sash and doors—we handle sash and doors still. I wrote a couple letters to the Oregon Portland Cement Company about cement in 1916 I believe; I did not buy from them."

Thereupon certain papers were identified by the witness, the same relating to correspondence between the witness and the Oregon Portland Cement Company at the time that Mr. Aman Moore was vice-president and treasurer, it being understood that the letters from the Oregon Portland Cement Company were signed by Aman Moore. The said papers were marked Exhibit 80 and introduced in evidence and read to the jury.

Upon cross-examination this witness testified: "Auburn is about 20 miles south of Seattle, between Seattle and Tacoma. This correspondence, Exhibit 80, is all I have had to do with the Oregon Portland Cement Company. Somebody gave me the address,—I don't know who did. I don't know the freight rate from Portland to Auburn; it must be higher than the freight rate from Seattle to Auburn. We buy some goods from Portland on a local freight rate. The rate is about 35 cents a hundred on hardware from Portland to Auburn and

(Testimony of T. J. Elliott.)

about 20 cents from Seattle to Auburn on hardware. In 1915 we handled probably four or five cars of cement, handled none in 1916 and have handled none since. The price didn't suit me and we weren't prepared to handle it and just cut it out."

**Testimony of J. A. Pooler, for the Government.**

Thereupon J. A. POOLER was called as a witness on behalf of the United States and testified as follows:

"I have been in the cement manufacturing business, that is to say, manufacturing not cement but pipe and tile, building blocks and road pipe reinforcing and have been [149] selling cement. We use cement for this kind of work. I have been in business at Salem since 1910. In 1914, 1915 and 1916 I got my cement from the Santa Cruz Cement Company. I have dealt with them exclusively. Riverside cement was sold at one time in Salem, I think not since 1914. The Washington cement companies sold cement in Salem in 1914 and before that time. The agent for the Oregon Portland Cement Company called on me but I didn't buy cement. He quoted the same price at which I was buying from the California company."

Thereupon the witness identified a letter marked Exhibit 81 and the same was introduced in evidence and read to the jury.

The witness further testified: "I have never bought any Oregon cement."

(Testimony of J. A. Pooler.)

Upon cross-examination the witness further testified: "This letter, Exhibit 81, gave 5 cents discount provided the bill was paid within ten days after shipment. Prior to that time the discount had been 1%. It raised the discount. I do not remember the several prices made to me; could not without looking at my books. I was charged so much for sacks and the amount allowed when the sacks were returned. I have done business exclusively in cement with the Santa Cruz since 1912, had the agency for the City of Salem for Santa Cruz cement. I was a dealer but they furnished cement to no other person in the city but me. I had this contract when the Oregon Portland Cement Company started in. I guess all the agents of the Oregon Portland Cement Company have called on me, sometimes once a month and sometimes every two or three months. They have wanted to sell me cement but I didn't want to make any [150] change."

On redirect examination the witness testified: "I get my cement in carload lots from Portland or California; most of it from Portland, some of it comes from California. When it comes from Portland it comes to Portland by boat, is loaded on cars and hauled to Salem. The Oregon company tried to get my business. They made the same price but no lower price than the California company."

**Testimony of A. W. Fisher, for the Government.**

Thereupon A. W. FISHER was called at a witness on behalf of the United States and testified as follows:

"I live in Corvallis, Oregon; am in the flouring mill business, have dealt in cement for ten or twelve years. Prior to 1916 I got my cement from the Mt. Diablo people, a California company. I have bought from nearly all the companies that were in the market in Portland when I could not get the Mt. Diablo. I used other brands—Golden Gate, Oregon and some Washington. Golden Gate is a California cement. The Mt. Diablo plant—I don't know its exact location; I understand it is near Los Angeles. The Golden Gate plant is north of San Francisco. In May, June and July, 1916 I got some Mt. Diablo and some Golden Gate. I think I got the first carload that was shipped out from the Oregon plant. The price was about the same as that quoted to me on the California cement. There may have been a little better discount to get the cement introduced. I get my cement in carload lots. When it came from California it sometimes came direct by rail from California, was switched off at Albany, and sometimes came by rail from Portland."

Upon cross-examination the witness testified: "I think it was in June, 1916, that I got the first cement from the Oregon Portland Cement Company. I bought a [151] great deal of cement from them.



(Testimony of A. W. Fisher.)

I wanted to buy from them as I thought I should give an Oregon product what business I could. I think they gave me a 5% better discount than the other companies. The Oregon Company solicited my business, Mr. Hollister called on me.

**Testimony of Aman Moore, for the Government.**

Thereupon the United States called as a witness AMAN MOORE, who testified as follows:

"I live in Los Angeles; am a cement manufacturer. I started in the cement business in 1887 and have been in it continually since that time. I have known Mr. Boettcher since about 1900; was in business with him from about 1900 until about the first of 1906. During this time I was general manager of the Colorado Portland Cement Company, at that time known as the Portland Cement Company, of which he was president. He is also president of the Cement Securities Company, a holding company which controls the stock of the Colorado company, the Devils Slide plant in Utah, the Three Forks plant in Montana and several other companies. I first became interested in the plant now known as the Oregon Portland Cement Company's plant at Oswego in February, 1909. I first met Mr. R. P. Butchart in the latter part of 1910. The Oregon Portland Cement plant started a few weeks prior to June 6, 1916 and made its first shipment on June 6, 1916. I had had correspondence with Mr. Butchart before that time on the situation of the Oregon Portland cement plant."

(Testimony of Aman Moore.)

Thereupon the witness identified a letter written by R. P. Butchart to the witness and a carbon copy of a letter attached written by said Butchart to Mr. Boettcher, and the same were offered in evidence as Exhibit 82 and introduced in evidence over the objection of the defendants [152] on account of the date thereof and their exception and was read to the jury.

Thereupon the witness identified a letter written by R. P. Butchart to the witness, marked Exhibit 83, and the same was introduced in evidence over the objection and exception of the defendants on account of its date and read to the jury.

Thereupon the witness identified a letter marked Exhibit 84 written by R. P. Butchart to the witness and the same was introduced in evidence over the objection and exception of the defendants on account of its date and read to the jury.

Thereupon the witness identified a letter written by R. P. Butchart to the witness marked Exhibit 85, and the same was offered and introduced in evidence over the objection and exception of the defendants on account of its date and read to the jury.

The witness further testified: "Mr. Coats mentioned in this letter was then president of the Washington Portland Cement Company."

Thereupon the witness identified a letter written by R. P. Butchart and also a copy of a telegram sent by the witness to R. P. Butchart, and the same was marked Exhibit 86 and offered and introduced in evidence and read to the jury.

(Testimony of Aman Moore.)

Thereupon the witness identified carbon copy of a letter written by the witness to R. P. Butchart, marked Exhibit 87 and the same was introduced in evidence over the objection of the defendants and their exception on account of its date and read to the jury.

Thereupon the witness identified a letter written [153] by R. P. Butchart to the witness marked Exhibit 88 and the same was introduced in evidence and read to the jury.

Thereupon the witness identified a carbon copy of a letter written by the witness to R. P. Butchart marked Exhibit 89 and the same was offered in evidence and objected to by the defendants upon the ground that the same was incompetent and irrelevant and does not tend to sustain any of the allegations of the indictment or any guilt on the part of the defendants, but the objection was overruled and an exception taken and allowed and the letter was introduced in evidence and read to the jury.

Thereupon the witness identified a letter received by him from R. P. Butchart marked Exhibit 90, and the same was offered and introduced in evidence and read to the jury.

Thereupon the witness identified a carbon copy of a letter written by him to Mr. R. P. Butchart, marked Exhibit 91, and the same was introduced in evidence and read to the jury.

Thereupon the witness identified a letter received by him from R. P. Butchart, marked Exhibit 92,

(Testimony of Aman Moore.)

and the same was introduced in evidence and read to the jury.

Thereupon the witness identified a letter received by him from R. P. Butchart, marked Exhibit 93, and the same was introduced in evidence and read to the jury.

Thereupon the witness identified a letter received by him from R. P. Butchart, marked Exhibit 94, and the same was introduced in evidence and read to the jury.

Thereupon the witness identified a carbon copy of a letter written by him to R. P. Butchart marked Exhibit 95, and the same was introduced in evidence and read to the jury. [154]

Thereupon the witness identified a letter received by him from R. P. Butchart, marked Exhibit 96, and the same was introduced in evidence and read to the jury.

Thereupon the witness identified a letter received by him from R. P. Butchart, and a carbon copy of a letter attached thereto as having been received at the same time, and the same was marked Exhibit 97, and was introduced in evidence and read to the jury.

Thereupon the witness identified carbon copy of a letter written to L. C. Newlands, marked Exhibit 98, and the same was introduced in evidence and read to the jury.

The witness further testified: "Mr. Butchart arrived in Portland April 11, 1916. Shortly after his arrival I talked with him in regard to his

(Testimony of Aman Moore.)

reason for being displeased with Mr. Hollister's soliciting business for the Oregon Portland Cement Company. He said they had a meeting in San Francisco during the week of March 17th to 25th, and the Washington manufacturers and the California manufacturers were present, and they had agreed to limit the territory of the Oregon company. They were not to ship east of Central Oregon, they were to ship into Central Oregon, but not east of Umatilla. Mr. Butchart said that Mr. Rogers of Spokane of the Mettaline Falls Company had made a bitter protest about Mr. Hollister invading the Spokane territory by quoting Walla Walla, Pendleton and Baker. In other words, he quoted beyond Umatilla, the point where the Oregon Company was to participate, and that I had committed the great offense of having the freight rates reduced so we could ship in there. I was soliciting business for the Company, it was only in that particular territory [155] where Hollister had been soliciting business, the territory outside of where the Oregon Company was to go *dubiness*. I was sales manager up to April 14, 1916, when I was replaced by Mr. Clark M. Moore; about 3 days after Mr. Butchart returned from California. While sales manager, I sent out a circular letter in January, 1916, throughout Oregon and Washington as far as Seattle, the Hawaiian Islands and Alaska."

Thereupon the witness identified this circular letter dated January 27, 1916, and the same was



(Testimony of Aman Moore.)

introduced in evidence, marked Exhibit 99 and read to the jury.

The witness further testified: "I received over one hundred replies from the Trade. I had a conversation with Mr. Clark M. Moore either the day prior to or on the same day on which he was elected sales manager. I turned these replies over to him, that is the carbon copies of the answers together with the inquiries. This is a carbon copy of one of the replies which came."

The same was introduced in evidence, marked Exhibit 100 and read to the jury.

"And this is a carbon copy of another of the answers which came."

The same was introduced in evidence marked Exhibit 101 and read to the jury.

"And this is another one of the inquiries which came in response to my circular, and a carbon copy of my answer to the same."

The same was introduced in evidence, marked Exhibit 102 and read to the jury.

"After I called Mr. Clark M. Moore's attention [156] to these various replies I had a discussion with him as to the arrangement made by Mr. Butchart in San Francisco in regard to price and territory. I asked him if he intended to carry out that agreement and he gave me his promise and absolute oath that he would not. That occurred on the morning before he was elected sales manager, I think. In this conversation I told Mr. Clark M. Moore of the agreement which had been

(Testimony of Aman Moore.)

made whereby our territory was restricted by the Columbia River on the north, Umatilla on the east and some point around Roseburg on the south, although we had our freight rates arranged so we could ship as far north as Olympia, Huntington and surrounding territory. We also discussed the removal of Mr. Hollister from the Sales Department and Mr. Butchart's direction about it because Mr. Hollister had been soliciting business for our Company in the State of Washington. We discussed the whole situation and everything pertaining to the combine, the matters of these inquiries and especially those about the territory which we were not supposed to ship or quote. We had one conversation two days later along the same line. On the 16th of April I invited him and his brother Joe out to my home at Oswego for dinner and there I received not only his promise but his oath—I received his oath on the square that he would not carry out the combine. I had the first conversation with Mr. Butchart about the combine after he returned from California, at the Portland Hotel or at the Cement office in Oswego. I think I came in first and called on him at the Hotel and we had a talk and later he came out to the factory. I had a talk with him about the reasons for my removal as sales manager and the substitution of Mr. Clark M. Moore. He related all the details of the meeting in California, [157] said that Mr. Rogers had come down from Spokane and complained of our having the freight rates changed and sending

(Testimony of Aman Moore.)

Hollister to Eastern Oregon. Mr. Henderson of the Pacific Portland and Mr. Coats of the Washington Portland had said that I was *persona non grata* as sales manager and insisted that I be removed; that Mr. Rogers had suggested Clark M. Moore and had met with the approval of all. The business of the Oregon Portland Cement Company was conducted absolutely in compliance with the agreement entered into there by Mr. Butchart, that is until a later date when I started to make trouble for them and then to cover it up they started to change their program;—that was a month or two later. Mr. Clark M. Moore and myself are not in any way related.”

Upon cross-examination the witness further testified: “I was first engaged in the cement business in 1887 as office boy of the Buckeye Portland Cement Company in Bellfontaine, Ohio, and a few months later went into the laboratory. I had nothing to do with the construction of that plant. I was with that company in various capacities until I became superintendent of it in 1895. Afterward I traveled for it in the summer months while I attended college, and finally went West, and in the fall of 1898 severed my connection with the Buckeye Company. I first became acquainted with Mr. Boettcher about 1900. He was president of a bank at Denver, had just moved from Leadville to Denver. He wasn’t at the head of the Colorado Cement companies at the beginning. From 1898 to 1900 this company was headed by William Geddes,

(Testimony of Aman Moore.)

a Denver bank crowd. The new plant was built in 1900 and at that time Mr. Boettcher came in and afterward became president of it. I testified upon the former trial of this case here, but [158] did not state in my testimony that I started the Buckeye Portland Cement Company at Bellfontaine, Ohio, in 1887. I have examined the record of my testimony which is shown to me. I started work for the Buckeye—part of my testimony is left out no doubt. I built the first plant in 1898 and 1899 for the Colorado Portland Cement Company and later I built the present plant which is still operating. I first met Mr. Butchart in the fall of 1910 or the spring of 1911—I think the fall of 1910. He was then managing director of the Vancouver Portland Cement Company at Tod Inlet, British Columbia. I first became connected with the Oregon Portland Cement Company about August 15, 1915. It succeeded the Portland Cement Company which has been previously incorporated and succeeds to the rights and properties of the Portland Cement Company. The Portland Cement Company was organized in the early spring of 1909. It succeeded to the rights of the company formed by Mr. Nibley of Utah. I think it was called the Utah Oregon Cement Company or the Oregon Utah. I guess this company was incorporated but no properties were ever transferred to it and no moneys accepted by it. Mr. Boettcher was interested in the Portland Cement Company. He became connected in the early spring of 1911

(Testimony of Aman Moore.)

by subscribing for a certain amount of bonds and stocks upon my invitation that he join us. At that time I knew of Mr. Boettcher's connection with the Colorado companies. Mr. Boettcher became connected with the Portland Cement Company, the original company here, I think in the late fall of 1910. He was a stock and bondholder. I do not know whether he was a director or not. I think he was. He became interested at my invitation and solicitation and at that time I knew [159] of his connection with the cement industry at Tod Inlet. Dr. Smith was the first president of Oregon Portland Cement Company. I don't recall who were the vice-presidents. I think I was secretary and general manager. I don't think I was vice-president. The first organization was a temporary organization on account of the company being organized in the State of Nevada. We used dummy directors and Mr. Butchart first became an officer of the company on December 21, 1915. He was not on the executive committee or director prior to that time but he took it upon himself and carried the entire force of the company. Prior to December 21, 1915, the management and control of the company was under me. The affairs were still conducted under the management of the old company which had not been dissolved and its properties had not been transferred, and I was president of the old company and as such proceeded to finish the plant before the new company acquired the property. There was an



(Testimony of Aman Moore.)

executive committee of the old company. We had an executive committee and a board of directors. The new company didn't function or attempt to do any business until December 21, 1915. My attention being called to Plaintiff's Exhibit 82 I will say that I haven't a copy of the letter to which this letter is in answer, nor any letters. I turned them all over to the District Attorney's office. I can't recall even after reading Exhibit 82 whether in my letter of September 14, 1914 there was any reference to prices, territory or any other matter in connection with selling cement by the new company. The new company was not organized until August, 1915. In September, 1914 the old company was standing *statu quo*. There was a plant, work had been [160] stopped and we were completing the financing. The old company may have been dissolved by a proclamation for failure to pay its license taxes. It was later reinstated. At the time the letter of September, 1914, was written the old company had probably been dissolved by proclamation of the Governor. Exhibit 83, dated May 12, 1915, was written prior to the organization of the new company. At that time the properties were held by the old company but it may have been in bad standing on account of not paying its taxes. In this letter reference is made to some conversation that I had about the California price of \$1.50 delivered on the road. I never made any such statement to the County Commissioners in Portland. I remember the in-

(Testimony of Aman Moore.)

cident referred to in this letter. I discussed the matter of the price of \$1.50 at the mill for road work in California. This was at a public meeting at the County Court House in this County. I had a talk with Mr. Coats in connection with that price about that time. Mr. Hunt mentioned in the letter with reference to sacks is Lee Hunt of the Hunt Engineering Company of Kansas City. About that time I made an address to the County Commissioners or rather an informal talk. I recognize the letter which you show me as the letter which I wrote to Mr. Butchart on May 16, 1915. I recognize Exhibit 84, letter from Mr. Butchart to me dated May 16, 1915 which refers to letter from me dated May 13, 1915. I wish at this time to correct one statement which I made. I said the new company didn't function until December 21, 1915. It was December 21, 1915, when Mr. Butchart was elected president. The company started to function from the time on which the property was transferred which was sometime before that date. I cannot fix the exact [161] date but it was between August 15th and December 21st. This letter which you show me dated May 13, 1915, is a letter which I wrote to Mr. Butchart."

The letter was thereupon offered in evidence marked Defendant's Exhibit 2 and read to the jury.

"Exhibit 85, a letter of May 22d refers to my letters of May 16 and 17, 1915. I recognize these letters as my letters of May 16 and 17, 1915."

(Testimony of Aman Moore.)

The said letters were then offered in evidence, marked Defendant's Exhibits 3 and 4 respectively and read to the jury.

"I recognize this letter book and a letter written by me copied therein dated June 9th. It is the same letter referred to by Mr. Butchart in his letter of June 14, Exhibit 86. I will not attempt to connect it up with the other letters."

The letter of June 9th was thereupon introduced in evidence marked Defendant's Exhibit 5.

At the time that the question of the Moran bid came up and when I addressed the County Commissioners in May, I intended to have Mr. Butchart furnish cement for these jobs from his mill at Tod Inlet or arrange with the Washington Portland Cement Company until such time as our plant was completed. At that time the present Oregon Company was not incorporated. I was having some difficulty in realizing on subscriptions and winding up collecting the final subscriptions. The final subscription collected was Mr. Boettcher's which was collected in the early part of August, 1915, and thereupon I immediately incorporated the Oregon Portland Cement Company. The correspondence shows that all acts performed by me were [162] subject to the approval of and under the instructions of Mr. Butchart. I was merely acting in the capacity of subordinate. All the correspondence conferring with him about the price, the refusal of him to permit me to quote \$1.75, in fact everything in the letters shows clearly that I was acting as a subordinate

(Testimony of Aman Moore.)

under Mr. Butchart and taking his orders specifically. He assumed the responsibility. He was not president but it was generally understood that he was to become president of the company and the subscriptions were all made conditional upon Mr. Boettcher or Mr. Butchart taking the presidency of the company, and later it was decided that Mr. Butchart should act as president. I cannot say at what time this decision was made. I was president of the old company at that time and no new company had then been formed. Nobody instructed me to consult with or obey Mr. Butchart's orders but I was dependent upon Mr. Butchart to carry out his commitments. Everybody else had paid up but him. I didn't care to do anything to offend him or to annul or prevent his paying up his subscription. The entire reorganization depended upon it. At that time neither Mr. Butchart nor Mr. Boettcher had paid up. They had promised to pay nearly three years before. I didn't consult with Mr. Boettcher about these sales matters or about what prices should be made. He was too far away. Mr. Coats mentioned in my letter of June 9th and whom I met at the Benson Hotel in connection with Mr. Eden and Mr. Moran, was president of the Washington Portland Cement Company, and Mr. Eden was president of the Superior Portland Cement Company. The occasion for the notification to Mr. Butchart about the dinner with Mr. Coats and Mr. Eden and Mr. Moran and that the agreement with reference [163] to the \$1.75 price and that no

(Testimony of Aman Moore.)

other contractor would have a lower price, came from Mr. Eden and Mr. Coats, was that Mr. Butchart had instructed me not to do anything without conferring with Mr. Coats in the matter and to make no price. This instruction was in writing. It is somewhere in the correspondence. In Exhibit 85, among other places, Mr. Butchart states: "In fact I would leave Mr. Nickerson severely alone and anything of importance you can take up with Mr. Coats." There was still further correspondence referring to this same matter. At the time I asked for these bids Mr. Butchart could fill the order either from his mill in British Columbia or from the Washington mill in which he was a director and stockholder at that time. I should not say he was a director; he was a stockholder and I supposed that we would fill these orders or contracts in part from either Mr. Butchart's mill in Canada or from the Washington mill of which Mr. Coats was president. The construction of this paving would take a year or two. We expected to have the plant running within six months and we then would be in shape to fill the orders from the Oswego mill. Mr. Butchart had agreed to limit the sale of the Oregon mill to central Oregon, including branch lines from the O. R. & N. in Oregon. The point would be somewhere about Heppner or Umatilla. The territory was bounded on the north by the Columbia River, on the east by about Umatilla I should say, and on the south by some point in the vicinity of Roseburg. On the former trial I did not say anything about the



(Testimony of Aman Moore.)

territory being bounded by the Willamette River. I did say bounded by the Columbia River on the north, the Des Chutes River on the east and a point about Drain on the south. Drain is [164] in the vicinity of Roseburg. You will find also in my testimony upon the former trial that I said something about in the vicinity of Umatilla. At the former trial of this case I did say that in my conversation with Mr. Butchart he said the limit was about the Willamette River and the Des Chutes River on the east, the Columbia River on the north, the Des Chutes River on the east and a point about Drain on the south. As to the points fixed by Mr. Butchart in that conversation, the Des Chutes River or Umatilla as an eastern point I would say they are a few miles apart so it doesn't make any difference except there are two more branch lines going into central Oregon beyond the Des Chutes where the Oregon company was to sell. Mr. Butchart said we were to sell in central Oregon. He did not fix the exact town. He said we were to sell central Oregon and sell south, north of Roseburg and north of the Columbia River. We were not to ship into Washington. The testimony which I gave on the former trial in which the point was fixed as Des Chutes is approximately correct. A matter of a few miles wouldn't make any difference. I guess it is 20 or 30 miles from the Des Chutes River to Umatilla. The Washington companies withdrew from the Oregon market in the early part of 1916 after Mr. Butchart meeting them in Seattle the

(Testimony of Aman Moore.)

first or second day of January leaving east to Toronto. They took steps to withdraw immediately thereafter. Mr. Butchart returned to Portland from the California trip on April 11, 1916. I had a conversation with him the following morning, several conversations, some at the Portland Hotel, some out at the plant in my office and one at the Cement Office which was open at that time. I remember the letter of March 31, [165] 1917, Exhibit 97. I think I answered that letter. I haven't any copies of my answers; they were either left in the company's files or taken by the District Attorney's office. I do not recall what answer I made. I kept a company file at the cement plant and a personal file. Some of the letters which the District Attorney has introduced passing between Mr. Butchart and myself were from my personal file and some from the Cement Company's files. I can't distinguish which were in my file and which were in the company's file. Personal correspondence I filed in my personal file and company correspondence in the company's file. I think I got about one hundred answers to my circular letter, Exhibit 99. The sending out of this circular letter was authorized by Mr. Butchart. The letter from the Olympia Hardware Company dated February 11, 1916, and my answer dated February 18th, Exhibit 100, was one of the inquiries received. Exhibit 101 is another of those letters. Letter from the City Engineer of Walla Walla dated February 1 and my answer is another. All of these would be in the company's

(Testimony of Aman Moore.)

file as company business. I may have taken them from the company's files or the District Attorney may. I think I took them out and afterward the District Attorney took them out of my files. The other inquiries were turned over to the Sales Department, to Mr. Clark M. Moore after he became sales manager. When Clark M. Moore assumed the office of sales manager these inquiries were turned over to him by me with the separate file kept for the sales department and his personal attention was called to these letters. We had secured freight rates at that time and were ready to quote prices and to do business. I do not recall from whom the other [166] inquiries came. I didn't attempt to take all of the inquiries; I don't recall how many I did take. I may have taken half a dozen, enough to show the nature of the correspondence, two of them from Walla Walla and one from Olympia. Mr. Butchart arrived from California before Clark M. Moore. I think he arrived in the evening or the early morning and I saw him immediately after the following day. The matter of the limitation of territory was explained to me at the first meeting and discussed at several meetings afterward during the next two or three days. He told me that it was the result of a conference between himself and the California and Washington companies, naming Henderson and Coats particularly and Rogers of the Spokane company. He also mentioned Erlin and he spoke about the Washington and California manufacturers. Those were the names of the only

(Testimony of Aman Moore.)

parties which I recall at the present time, and he told me that he had agreed with these gentlemen to limit his territory. Mr. Rogers was of the Lehigh Company, Mr. Henderson of the Pacific Portland. Mr. Rogers' plant did not ship into the Oregon territory but he was there to protest against our bringing down the freight rates. Mr. Butchart said that Mr. Rogers had complained bitterly because we had had the freight rates reduced east of Umatilla and because we had had Hollister over there soliciting business in eastern Oregon which was the territory of the Spokane company and they didn't expect us to break into it and that he suggested that Clark M. Moore be put in as sales manager instead of myself. He said Mr. Rogers had recommended it at the recent meeting in California. He said that Mr. Henderson and Mr. Coats had insisted on my being succeeded by somebody; that I was *persona non grata* [167] to them, that they couldn't trust me to carry out their agreement. I do not recall having had any business dealings with Mr. Henderson. We purchased a little cement from the Pacific Portland through their local agent I think. We had no trouble with Mr. Henderson about the purchase of that cement; we made a settlement in a friendly way. In this conversation Mr. Butchart said that the Oregon Company was to sell at the prevailing price at that time, that there was to be no cut or change in the prices; that the Oregon company was to be given the privilege and right to name the prices in Ore-

(Testimony of Aman Moore.)

gon. I told Mr. Butchart in regard to Mr. Hollister's activities in Eastern Oregon that I had sent him through there primarily to look into a bond issue and try to prevent it. The bond issue was for flotation for building bitulithic paving. I think Hollister had only been to Baker City, Pendleton and La Grande and not into Washington at all. We didn't have any cement to sell at that time, but expected to have some very soon and the bitulithic people were promoting this bond issue to build bitulithic pavement and we wanted to prevent that if we could. I told Mr. Butchart it was a very unwise thing to limit our territory. That we hadn't gone even where our freight rates would legitimately carry us and I doubted the possibility of selling our output in the limited territory. Mr. Butchart told me that Clark M. Moore had already been selected as sales manager and that a board meeting was to be called in a day or two to install him as soon as he had arrived from California. He was still in California. And he told me that Clark M. Moore was selected at a conference in San Francisco between March 17th and March 25th. Clark M. Moore arrived on April 14th. [168] I saw him at once. I had a conversation with him about this agreement with Mr. Butchart, told him what had happened and received his absolute promise that he would not abide by any such agreement or be a party to it if he were made sales manager. I told Clark M. Moore that the territory had been restricted, that we were not to sell in Washington,



(Testimony of Aman Moore.)

were not to sell farther than Central Oregon and a limited territory on the south. Clark M. Moore said he would sell cement where our freight rates would carry us and wouldn't be a party to any such agreement. It was possibly a few days later when I turned over to Clark M. Moore the files of the sales department and called his attention to the number of replies to my circular letter. I was vice-president and treasurer of the company at this time and sales manager. The only consultation that I had had with Mr. Butchart in regard to entering into such agreement is contained in the correspondence which has been introduced here in evidence. I do not remember whether Mr. Butchart or myself was the largest stockholder in the Oregon Portland Cement Company at that time. I was vice-president, sales manager and a director. The directors' meeting was held the evening of the same day on which Clark M. Moore arrived in Portland and at that meeting he was appointed sales manager upon my nomination. I had several conversations with my co-directors between the 11th and 14th of April, 1916. We ascertained that a majority of the board, including some dummies controlled by Mr. Minor, were absolutely controlled by Mr. Butchart and that any protests were unavailing, and it was a matter of compromise, putting them in instead of being forced out. I nominated Clark M. Moore as sales manager after he had agreed that he would not under [169] any condition carry out the agreement made by Mr. Butchart in California.

(Testimony of Aman Moore.)

He was elected two days prior to the date on which he took dinner at my house. My reasons for nominating Clark M. Moore who Mr. Butchart told me was to be elected for the purpose of carrying out an unlawful agreement, were several. One was that he had given me his word of honor that he would not carry out the illegal agreement; another was that Mr. Boettcher had fallen down about \$70,000.00 on his subscription and I had been foolish enough to take my own stock, my life savings, and borrow money and put up my stock for the benefit of all of the stockholders and it meant a liability of interest of about \$400.00 a month and it was to my interest to see the plant running and to try to save it instead of losing every dollar I had on earth. I didn't say that the election of a sales manager to carry out this illegal agreement was the proper thing for the stockholders. It was done to have harmony in the company and at the same time I was trying to protect the company and to prevent the illegal combine that Mr. Butchart had entered into on behalf of the company. I had talked to Clark M. Moore prior to his election. He had given me his word of honor. I had discussed the matter with several directors and told them I thought he was sincere and would not enter into the illegal combine and I thought we ought to give him a trial. After his appointment I had Clark M. Moore and his brother, J. E. Moore, come to my house for dinner. I was satisfied with the promise which he made me, otherwise I would not have

(Testimony of Aman Moore.)

nominated him for office. I also exacted an additional oath from him. He gave me his oath on the square. It is not necessary to explain what this means. It is a Masonic [170] oath, and he gave me this oath that he would not enter into any combine and I exacted this oath from him as from one Mason to another. The first shipment made from the Oregon Portland Cement Company was on June 6, 1916. I am positive of this date. If the records show that the first shipment was made on June 9th they have been tampered with. I have my memorandum of the record. I was at the plant at the time. I think it was shipped to Corvallis upon one of the orders which I had taken some months previously. I think it was shipped to Foster. If the bill of lading and other papers show it was on June 9th I would have to acknowledge that I am wrong, but my judgment is that the memorandum I made and all the records show June 6th. It may have been invoiced on the 9th. Quite often the invoice will be a day or two late, but I am certain it was on June 6th that it was shipped. Probably more than one car was shipped the first day. We continued to ship right along each day thereafter. There was a lot of orders booked. They probably continued shipping right along. I said that Clark M. Moore carried out this unlawful agreement and didn't keep his promise to me. The first knowledge I had of this was a few days after he was elected sales manager, perhaps a couple of weeks afterward, the

(Testimony of Aman Moore.)

evening before he left for Denver. I called on him at the Portland Hotel—no I think it was a day or two after he was elected sales manager—he put in a call for Coats and Eden in their Seattle office and in my presence talked to them as “Jack” and “Al” and advised them that he had been installed as sales manager and that they need have no worry; that everything would be carried out O. K. That was the first intimation I had. That is the substance of the conversation. Prior to the time [171] Mr. Butchart arrived from California there were no two factions except as these sales matters created two factions; one faction wanted to go into the combine and one didn’t, but there was nothing of this prior to my talk with Mr. Butchart when he arrived here on April 11th. That was the beginning of the factions. In my letter to Mr. Butchart of December 23, 1915, advising him of his election as president and discussing certain difficulties which had been between his brother and myself, this was a little personal tilt with his brother. It wasn’t necessarily a matter of faction at all. At the same time Mr. Minor and the dummies which he had put in lined up to carry out that program. Yes Mr. Minor lined up with the dummies to carry out the program. If we had had some honest attorneys that trouble would never have occurred. Mr. Cotton did not line up with the dummy faction. The dummy he put in was honest and stayed with us regardless of orders given by Mr. Minor—that is Jimmy Wilson. I had known Clark M. Moore

(Testimony of Aman Moore.)

about a year previous to the time he was made sales manager; I met him casually in the Colorado office, never knew him intimately at all. I knew that he was sales manager of the Colorado companies. I didn't discuss with him whether he had given up his position as sales manager of the Colorado companies. The Colorado companies did not compete with the Oregon Portland Cement Company. They were too far away and there were other plants, Utah plants, between Oregon and Colorado. The Oregon plant would meet the Utah plant at Huntington, Oregon. That was as far west as the Utah mills shipped and as far east as the freight rates would permit the Oregon company to ship, although the equa-distant point was somewhere near Boise. The [172] first knowledge I had of this combination was on April 11, 1916, although of course I could draw my own inferences from the correspondence I had previously had, the Hollister letter, etc., and the knowledge that I obtained on April 11, 1916, was by direct statement from Mr. Butchart that he had made this agreement. He did not say anything at that time about Clark M. Moore making any agreement. After Clark M. Moore began to act as sales manager he went ahead to fill that agreement, notwithstanding his promise to me, and carried out this policy until I began to make trouble for them, and then they started to cover. The first knowledge I had was June 9th, I mean the first action I took. I had gone to one of the directors, in fact to two of them and had them write



(Testimony of Aman Moore.)

letters to various mills in California and in Washington and the Oregon mill asking for quotations, both at Oregon City and Vancouver and at different points in Washington. The letters all came back from all the companies uniformly, the Washington mills quoting ten cents a barrel higher at Oregon City. These letters are in the record, I think known as the Bates letters. I am telling you the method by which I started. I will say I began to make trouble June 9th. This was the date on which I prepared a complaint for injunction in the State Court. I have no copy of that complaint."

Thereupon the witness was shown a paper which was introduced in evidence marked Defendants' Exhibit 6. He testified that it looked like a copy of the complaint prepared by him for filing in the State Court but that he would not testify positively to it. The paper was marked Defendants' Exhibit 6 and introduced in evidence and read to the jury.

The witness further testified: [173] "This complaint was prepared under my direction and I swore to the statements contained therein. In this complaint it is said: 'Recently said Clark M. Moore at San Francisco, participated in a conference between the agents of the defendants incorporated in California and finally perfected out and rounded out the schedule heretofore mentioned, and upon his arrival at Portland, Oregon, he then and there held conferences with one Irwin, etc.' This was a little less than two months from the time that Mr. Butchart had told me that he had made the agree-

(Testimony of Aman Moore.)

ment; he made the agreement in March. I said it was made by Clark M. Moore because agreements of that kind are like a living thing, they shed their bark; they have to be continued. This agreement of Clark M. Moore was simply a detail and new price sheet to be gotten out. He became an instrument in their hands for carrying out the general agreement entered into by Mr. Butchart with the members in San Francisco. At the time this complaint was prepared I had knowledge of the agreement made with Mr. Butchart, had had a talk with him. The complaint was sworn to, ready to be filed and the object was to prevent the meeting from taking place, and an injunction was prepared in accordance with the prayer of the complaint and signed by Judge McGinn and with my attorney I went to Mr. Minor's residence with that injunction order and gave him a copy of it. It was not served because Mr. Minor agreed that there would be no quorum; the meeting wouldn't be held. When this complaint was prepared it was based upon an agreement made by Clark M. Moore and not Mr. Butchart though I had knowledge of the agreement made by Mr. Butchart, because the complaint pertained to the particular schedule [174] set forth in the complaint. The agreement made by Mr. Butchart was made by Mr. Butchart on behalf of the Oregon Portland Cement Company and the California mills and the Washington mills. It did not include the southern California mills but only the northern California mills. Mr. Rogers was

(Testimony of Aman Moore.)

present at the meeting, no doubt representing his own and the International mill, and the agreement included the western Washington mills and the eastern Washington mills, especially the territory of Eastern Oregon which the Oregon company was supposed not to invade and which belonged to the Spokane mills. The Three Forks Portland Cement Company was added because Clark M. Moore was then sales manager of the Cement Securities Company which controlled three cement companies, the Three Forks Company, the Union Portland Company and the Colorado Portland Company. In my testimony I said that the Colorado Cement Company and the Utah Cement Company were not natural competitors of the Oregon Portland Cement Company by reason of the freight rates. A few years previous we shipped cement to the entire Coast from Colorado. We had a freight rate as low as the Pacific Coast at that time. I used the word 'natural.' The unnatural meeting of cement agents in one room and railroad employees in another room have torn down freight rates and they are as high to-day for 150 miles as the natural rates were for 1,000 miles ten years ago. I presume the Three Forks, Union and the Cement Securities Company and the Riverside Portland Cement Company have been in this combination from the time it was formed. I don't know when this was. The evidence brought out in this trial showed they had been in it for two or three years. I was not aware of that [175] fact at the time. Mr. Butchart framed up the original

(Testimony of Aman Moore.)

agreement in restraint of trade, and Clark M. Moore was appointed as the instrument to carry it out and further develop it. On May 26th Clark M. Moore was in San Francisco and there was a meeting of the California manufacturers, at which time the new price schedule went out to all California and Oregon companies from the Portland office under date of May 29, 1916. The price list was prepared and later sent out as freight schedule signed by Fred Muhs. I presume that the Vancouver Portland Cement Company had been in this combine for some years, for they hadn't been shipping into the United States and the Washington mills were not shipping to British Columbia. In the complaint to which my attention is called I say that an executive committee was appointed and that the purpose of this complaint was to prevent the abolition of the executive committee and the two vice-presidents. Mr. Butchart was chairman of the executive committee and Mr. Newlands and myself were the other two members. This committee had been in existence since the company was organized. That particular committee was selected I think when Mr. Butchart became president on December 21, 1915. I don't recall any meetings ever held by this committee. My recollection is that the first shipment of cement made by the Oregon Portland Cement Company was on June 6th. This complaint, to which my attention is directed, was prepared, the injunction order obtained and the injunction taken out to Mr. Minor's house on

(Testimony of Aman Moore.)

the evening of June 9th. Prior to making this complaint I discussed the matter and made complaints to the directors, probably to all of them individually, and discussed it with Mr. Bates, Dr. Smith, Dr. Moore and Jimmy Wilson, and I think with Mr. Minor—with [176] Mr. Minor I think a few days prior to the filing of the complaint, in his office. If Mr. Butchart was here I discussed it with him personally and when he was not here I wrote to him. I can't recall when I wrote him; all the correspondence is in the hands of the District Attorney and the attorneys for the Oregon Portland Cement Company. I took a trip to Seattle, made before the preparation of that complaint but didn't see Mr. Butchart. I got back from Seattle on the 9th. I recognize the letter which you show me, a letter written by me to Mr. Butchart on June 19th."

The same was introduced in evidence marked Defendants' Exhibit 7 and read to the jury.

"I called the attention of the president of the company to the action of Mr. Clark M. Moore in entering this combination. It was my custom in writing letters to segregate one item from another. The probabilities are that on the same day and in the same mail another letter was written concerning the illegal matter. He had a copy of this complaint which I forwarded to him. I have no copy of those letters. They are in the files somewhere, in the file which the District Attorney had. When I was vice-president and sales manager I



(Testimony of Aman Moore.)

had a stenographer write a number of letters. If the letters were of a personal nature they were put in my personal file. If they related to the company's business they were put in the company's file. I recognize the letter which you show me. It was written in an effort to correct matters and straighten them out."

The letter identified by the witness was introduced in evidence, marked Defendants' Exhibit 8 and read to the jury. [177]

"I recognize the letters contained in this file shown to me. This letter is one of the numerous replies to the circular letter sent out in January."

The letter identified by the witness was introduced in evidence, marked Defendants' Exhibit 9, and read to the jury.

"This letter was signed by me as vice-president and treasurer. I sent the circular letter to the Hawaiian Islands, Seattle and to Tacoma, circularized southwestern Washington as far as Seattle, Alaska, Hawaiian Islands, all of Oregon and around the Walla Walla country in Washington not quite to Spokane. The circular letter was sent to Seattle with the expectation of selling in Seattle and in Tacoma. In the letter of February 2, 1916, in reply to inquiry from Alexander and Baldwin I wrote, "We should be able to compete with any other plant manufacturing on the Pacific Coast for shipment into Hawaiian territory, providing shipment could be made direct from Portland. If, however, we should be compelled to ship via Tacoma, that

(Testimony of Aman Moore.)

would be nearly thirty-two cents as against nineteen cents from the factories of the northern Washington companies." The freight rate was 13 cents a barrel more from Portland than from the Washington companies. Yes we could compete with the Washington mills in Seattle and Tacoma. The mill price may be anywhere from a variation of a dollar a barrel; some places you may get fifty cents or a dollar less than you get at some other place, and it is the average total f. o. b. mill price that makes up your selling price. For business in Seattle we could no doubt afford, if we needed a volume of business to keep the plant running, we could easily take a volume of business there and be profitable too at say 13 cents a barrel less than you give the Washington [178] mills. They might do the same thing in Portland. It is my idea that we can compete with another mill if it has a differential in freight rates of 13 cents a barrel. I have a plant in California with a differential of nearly a dollar a barrel in the San Francisco market,—the difference between  $9\frac{1}{2}$  cents freight rate per hundred pounds and the freight rate of  $26\frac{1}{2}$  cents per hundred pounds; that makes 68 cents a barrel. After this complaint which has been shown me was prepared, in addition to the letter which I wrote Mr. Minor, which is in evidence, suggesting certain directors, in discussing that letter with Mr. Wilcox he suggested and requested that I go to Denver and discuss the whole matter with Mr. Boettcher before any action was taken. I was in Seattle

(Testimony of Aman Moore.)

on my way to Denver when I received notice that this meeting was called to replace me and then I came back. The complaint was served but not filed because Mr. Minor agreed upon not having any quorum and so there would be no action taken and no meeting held until I had time to go and confer with Mr. Boettcher. I then went to Denver and conferred with Mr. Boettcher some short time afterward. I did not agree at that time with Mr. Boettcher upon any settlement of this matter. Mr. Boettcher agreed to come on to Portland and a little later he and Morse,—Morse is general manager of the Cement Securities Company, came to Portland to settle upon it. No suit had then been filed. The question was of taking action to prevent the company from participating further in the combine. Mr. Boettcher agreed that would be remedied, that Mr. Clark M. Moore would be replaced as sales manager and that while Mr. Butchart might remain president I would be placed in a position where I would [179] not only manage the plant but manage the sales and see that nothing illegal was done. This matter came up about a week after Mr. Boettcher returned, at a meeting in Mr. Minor's office with Mr. Clark M. Moore, supposed to represent Mr. Boettcher and Mr. Ross, supposed to represent Mr. Butchart. When I called at Mr. Minor's office I was informed that an entirely different program had been arranged, not at all in accordance with the agreement made with Mr. Boettcher and Mr. Morse. While they were here it was

(Testimony of Aman Moore.)

agreed between Mr. Boettcher, Mr. Morse and myself, that Mr. Clark M. Moore should remain as sales manager temporarily and Mr. Butchart as president temporarily. Only the proposition that Mr. Newland should resign and I act as superintendent of the mill, was in the modified condition proposed in the meeting held in Mr. Minor's office. They were willing that I should have any salary I should ask for, that I should manage the plant but should not interfere with the sales; that if I had any fear of being indicted for violating the law I should resign all my titles and they, as officials, of the company would thereby be the legal guilty ones. In other words a subterfuge—the whole proposition proposed by Mr. Minor to carry out. In my letter of December 23d, Government's Exhibit 87, in which I say that Mr. Ross suggested that we could arrange to ship a car of our sacks to Mr. Butchart's mill, have them filled by him and returned to Portland, store the same on the docks and start making deliveries immediately of Oregon cement, but that Mr. Butchart would know best about the matter and I would be guided by his wishes and that I presumed that it would be necessary for Mr. Butchart to have a satisfactory understanding with some of the Washington people before he would [180] want to make such arrangements, I so wrote because I had already discussed this matter with Mr. Butchart and Mr. Butchart had explained to me that some years previously he had been unable to fill orders in

(Testimony of Aman Moore.)

British Columbia, had invited the Washington and California people to ship into British Columbia, that they had done so with the understanding that the arrangement was only temporary while he could not fill the orders and that later he had increased his plant and could fill the orders and had notified them to stop, but that one of the companies failed to stop and shipped 40,000 barrels into British Columbia, and that he thought he could arrange with the companies in Washington and California so that he could ship back that 40,000 barrels here without having a row over the matter. This was not the first suggestion about shipments. It had been discussed on two or three occasions prior to that time. In the same letter I stated that Mr. Ross had suggested that there would be a meeting in San Francisco of cement manufacturers within the next week or ten days and asked Mr. Butchart whether he contemplated attending this meeting and if not whether he advised us to have a representative there. Mr. Ross is Mr. Butchart's son-in-law and suggested that it might be proper for us to do so and I wrote Mr. Butchart to find out. I recognize this paper. It is my signature to the same. It is a call for a meeting of the directors of the Oregon Portland Cement Company."

This call or paper was then offered in evidence, marked Defendants' Exhibit 10 and read to the jury.

"In the paper there is date 14, in pencil 24, I think 14th is the correct date. It was held back



(Testimony of Aman Moore.)

nearly two weeks by the secretary before it was sent out, during which time another call was prepared by Mr. Ballard, another [181] vice-president. In this call, signed by me as vice-president, on the 14th day of August, 1916, I said that this agreement with reference to fixing a price in the city and with reference to limiting the territory to the Columbia River and east to Umatilla, I said was made by Clark M. Moore. In the call also I named the eastern Washington companies as well as the California and western Washington companies. In my testimony on direct examination I said that this agreement was made with Mr. Butchart and that he informed me of that on April 11th. Both statements are correct, that contained in the call and to which I testified on my direct examination. I now say at the time the call was issued that Mr. Butchart had made that agreement, Clark M. Moore had further acted as a tool of Butchart and the allied interests in carrying it out, had conferred with these people later reconfirmed the agreement and perfected the manner of carrying it out. I left out Mr. Butchart in the call because he was absent at that time. I left out any statement in connection with his making any agreement because he was absent and not in the United States and Mr. Clark M. Moore was here and in active charge. I had several conversations with Mr. Butchart when he came from California in reference to this agreement. The matter was discussed for three or four days at meetings

(Testimony of Aman Moore.)

at the Portland Hotel and at my office at the plant. He simply said that they had held this meeting; that Mr. Henderson and Mr. Coats had said I was *persona non grata* in the sales department; that Mr. Rogers had come there from Spokane and had bitterly complained about having the freight rates interfered with in eastern Oregon so that they were the same as the Spokane mill; that the territory [182] had been restricted, that we were to sell only in restricted territory, practically the Willamette Valley and central Oregon; that Clark M. Moore had been recommended by Rogers and O. K.'d by the other interests there at those meetings of the California and Washington manufacturers; that he had later conferred with Mr. Butchart down at Coronado and Clark M. Moore was then on his way and would be at the Directors' meeting in a day or two and would be installed in my place. On the previous trial I said the territory was limited to Drain on the south, to the Des Chutes river on the east and in my direct testimony on this trial I said that it was limited to Roseburg on the south and Umatilla on the east. This is practically the same thing, that is central Oregon and the Willamette valley. Mr. Butchart in his conferences with me upon his return from California said Central Oregon and branch lines into Central Oregon and the Willamette Valley. He didn't fix either Des Chutes or Umatilla. The Willamette Valley would be some point I suppose north of Roseburg, somewhere in the vicinity of Drain. Mr.

(Testimony of Aman Moore.)

Butchart limited the territory to the Willamette Valley. He did not mention the towns but the Willamette Valley. I think he did say in the vicinity of Roseburg. Mr. Butchart remained in Portland at that time from the 11th to the 14th of April. He left the same night that Clark M. Moore was installed as sales manager. I think Mr. Butchart made one trip here after that, but I am not positive that he was here at all. If he was I don't think I spoke to him. There is no relationship between Clark M. Moore and myself. I had met him two or three years prior to this time when he came from California. In telling Clark M. Moore of the conversation which I had had with Mr. Butchart I repeated the conversation which I [183] had with Mr. Butchart and in my talk with Clark M. Moore probably stated the south line of our territory as the Willamette Valley and Central Oregon and the Columbia River on the north. Clark M. Moore's reply was that he wouldn't be a party to any such agreement; that he would sell our cement where the freight rates would carry us, which of course meant as far north as Olympia, Washington and as far east as Huntington; in fact, as far north as Seattle. I said that Clark M. Moore immediately began to carry out this agreement. I remained in Portland I think until the following November and was familiar with the operations of the Cement Company during that time. Immediately after I started the action against them, on August 28th, they sent Hollister out in an effort

(Testimony of Aman Moore.)

to cover up. He had made one trip in Washington after the action was filed on June 9th. I am not absolutely positive but that they made some sales outside of this territory after June 9th. The first sale as I have said was made on June 6th. They didn't immediately begin to go outside of the territory. They had refused to make any sales whatever outside the territory up to June 9th. They quoted higher prices in every instance for points outside this territory although in many places the freight rates would be the same. They had refused to answer the many inquiries from Washington and points beyond this territory which I had turned over to Clark M. Moore. I haven't access to the records of the Company but it is my recollection that no shipments were made outside the restricted territory until after the action was filed on August 28th, although there may have been one or two shipments made during that period. The action filed on August 28th was suit commenced by me in the Federal Court against the same defendants mentioned in [184] the suit prepared for the State court. I did not include Mr. Minor in this suit but he was mentioned in the first suit. I didn't include Mr. Minor because my lawyers took pity on him as a brother lawyer. They felt he was guilty but out of respect to his profession they eliminated him. I had a conversation with Mr. Minor in his office the morning after June 9th when the first suit was prepared. I did not admit to him that he had no knowledge of this condition

(Testimony of Aman Moore.)

stated in the complaint. Upon the former trial of this case I did testify in regard to the conference with Mr. Minor as follows: 'Now, with reference to this matter of notification to Mr. Minor about his alleged division of territory; you say that you did not have a talk with Mr. Minor June 10th, the day subsequent to the filing of this state suit in the state court—not a filing of it, but to the time you took the complaint out to Mr. Minor's house—or did you have a conversation with him?

A. I had conversations very frequently with Mr.

Minor. Q. Who was present at that conversation?

A. Usually Mr. Minor and myself. Q. But you

deny that you admitted in that talk that the charges preferred against Mr. Minor in that complaint were not true? A. Yes— Q. And the

charges against him were a mistake? A. I abso-

lutely deny that. I did have a talk, but I told him that while he might not have been advised

of all the facts, and might not have purposely been

a party to the illegal acts of the others, at the

same time his attitude of defending them, in

my judgment, made him equally guilty, and for

that reason he was made a defendant and after-

wards I was willing to withdraw him as a de-

fendant and give him the benefit of the doubt.'

I did say that Clark M. Moore was made sales

manager upon my nomination by reason of the

[185] talk which I had with him prior to that

time and his promise. I made statements to

other directors prior to nominating him as to his



(Testimony of Aman Moore.)

qualifications or fitness for the position, made a statement to Mr. Minor and other directors about this, told Mr. Minor that he was a man of experience and should have the ability and that he had given his word of honor that he wouldn't carry out the illegal arrangement previously entered into by Mr. Butchart. I told him that Clark M. Moore had given me his word of honor. The other directors at this time did have knowledge of the fact that Mr. Butchart had made this agreement. Upon the former trial of this case I testified as follows: 'Q. Just prior to that meeting do you remember having a talk with Mr. Minor with reference to Mr. Clark Moore? A. Yes, sir. Q. Do you remember where that conversation was had? A. Probably at his office. Q. At that conversation, with you and Mr. Minor present, is it or is it not a fact that you said to Mr. Minor that Mr. Clark Moore was a suitable person to be appointed as sales manager, addressing Mr. Minor as director? A. I recall stating that to Mr. Minor and stating that to all the directors. Q. You said that to all the directors? A. As far as I know, yes. Q. Do you know whether the other directors at that time had knowledge of this supposed agreement between Mr. Butchart and the California and Washington companies? A. I doubt whether they had any knowledge of it. Q. You had knowledge of it? A. I had knowledge. Q. And notwithstanding that knowledge, you recommended Mr. Clark Moore to all the other directors? A. Yes, sir. Q. Resigned

(Testimony of Aman Moore.)

in his favor and nominated him for the position? A. Yes.' At the former trial of this case I said I doubted whether the directors had knowledge of this arrangement made by Mr. Butchart. At this trial I have said that they did [186] have knowledge of it. It is my recollection that they did have; I will still use the word 'doubt.' I won't be positive whether I talked with all of them and told them all the facts in the matter at that time. The agreement with regard to prices which I said Mr. Butchart told me he had made, was carried out up to the time that I brought the suit on August 28, 1916. The price at which cement was sold by the Oregon Portland Cement Company during that period was at the schedule set forth in that complaint and I say that the Oregon Portland Cement Company confined itself to the schedule set forth in that complaint. I don't know the exact date on which the old company, I mean the Portland Cement Company of which I was president and general manager, was reinstated. It was at the time when the reorganization was completed and previous to the time when the properties were transferred to the present company. It was just about the time of the reorganization of the new company, perhaps just previous to the incorporation of the new company. It was a part of the work to be carried out by the attorneys in order to complete the organization of the new company. The price of cement of the Oregon Portland Cement Company is the same price set forth in my complaint

(Testimony of Aman Moore.)

in evidence in this case and in the call for the meeting in evidence in this case. Other cement companies were selling at the same price. Generally speaking Portland cement is a standard article, possessing certain qualifications which all Portland cement must possess if it is to be used in contracting jobs. The properties of the testing society are so variable that I cannot say whether cements possess other different properties than those required generally by the testing society. If cement is required for Government work there may be a special [187] specification that is not covered by the requirements of the society of testing materials. Cement for Government work requires a low percentage of silica, a low percentage of magnesia and a low percentage of sulphur. Cement does not necessarily have to stand tests for any particular time or have to be used for any particular time in order to be suitable for Government work. It depends on what work a contractor is doing whether he would give more for one cement than for another. In the general market different cements are better for certain work than other cements owing to the chemical constituents, quick hardening and slow hardening due to the amount of aluminum and iron, due to the ratio of iron and aluminum to the silica. Some cements will harden as well in seven days as others will in three months. In using cement in concrete work contractors want a quick hardening cement so as to remove the forms quickly. In Govern-

(Testimony of Aman Moore.)

ment work the Government will restrict to low aluminum on account of the sea water effects on aluminum. The Government might want a higher ratio of silica to iron and aluminum. Upon the former trial of this case I did testify as follows:

‘Q. In that connection Mr. Moore, cement is all of a standard quality or grade is it? A. Is what?

Q. Cement is all of a standard quality or grade?

A. That is sold under a guarantee to meet a standard specification. Q. Well, any cement that conforms to the standard specifications will answer the

requirements of cement dealers and users, will it? A. Yes, sir. Q. Is one cement better than another?

A. Yes, sir. Q. Do dealers pay more for one cement than they will for another? A. No, sir. Q. Do

you know why? A. Because they can’t sell it for any more. Q. As long as it stands the specifica-

tions and meets all the requirements, why that [188] is all that is necessary to a contractor using the cement. Q. And dealers will not pay more for

one cement than they will for another then? A. No, sir. Q. Did you testify to that on the

last trial? A. Will you read the balance of the testimony, please? Q. Then as a matter of fact

where an article is standard and dealers won’t pay more for one cement than they will for another, the price is apt to be uniform, is it? A. Not neces-

sarily, there are exceptions to that. Q. In what manner, Mr. Moore? You say the dealers won’t pay more for one than they will for another; how are we going to get an exception for that?

(Testimony of Aman Moore.)

A. There is a great deal of cement that is sold not under any specifications, but lots of times the contractor or consumer will get in the habit of using certain brands because it works well under the trials or for physical properties, and that man will pay as high as fifty cents a barrel more for that brand than he would for another brand. Q. You know of particular instances in which that was done, do you? A. I can't recall any particular instance at this time, but I could refer back to notes, and probably call attention to a hundred of them.' My testimony at the last trial defines under what conditions a higher price would be paid for one cement than for another. Contractors will not pay more for one cement than for another for work for ordinary sidewalk or foundation or roadway work; but on other work like reinforced concrete or marine work, special construction, irrigation work, they do pay more, depending on the particular quality of the cement. For instance, the Government paid \$3.50 for the cement used in the construction of Pearl Harbor at Honolulu because it contained iron and not aluminum, using a product made in Germany. [189] Sea water attacks aluminum and does not attack iron. The Washington mills withdrew from the Oregon territory soon after the first of the year 1916; they stopped taking new business but continued to deliver cement on certain orders they had, including a highway contract. Mr. Butchart told me that he thought if we needed the Oregon market the Washington com-



(Testimony of Aman Moore.)

panies might withdraw later but not at that time. He didn't say anything about an agreement made, a definite agreement that they would withdraw. I am sorry to say Mr. Minor was attorney for the company during the year 1916; am sorry to say he was a director of the company. I think I told the company's attorney and directors that Mr. Butchart was entering into this combine almost immediately after Mr. Butchart returned and I found it out, within a few days at least. I think I discussed it with him prior to June 9, 1916, but I can't swear to that absolutely. He asked me for evidence in support of my statement and I furnished him some evidence about June 9th. I gave him the original letters that I had secured from Mr. Paul Bates showing that the Oregon Portland Cement Company was quoting a higher price to Vancouver, Washington than the Washington mills 350 miles away and that with our freight rate lower, and the letters showing that Washington quoted ten cents higher on this side of the river although the freight rates were the same. I showed him a copy of the telegram to Galbraith-Bacon refusing to quote in Seattle; and told him about the conversation between Clark M. Moore over the phone to Eden and Coats in Seattle; and about the conversation that Clark M. Moore had with Eden in Seattle before he quoted Galbraith-Bacon, and that Mr. Butchart was present in [190] Seattle at that time. I did not show him the original letters which I had received from Mr.

(Testimony of Aman Moore.)

Butchart from California. I gave him what I considered an abundance of evidence. I don't think I said anything to Mr. Minor, the attorney for the Company, about any correspondence between Mr. Butchart and myself and I don't think I gave him any of the letters passing between Mr. Butchart and myself. These letters were then in my personal possession in my personal file. I am not sure that all of them were in my file; some of them may have been in the company's file. I will not attempt to pick out those which were in my file and those which were in the company's file, but would say that the company's business were in the company's file and personal and private correspondence with Mr. Butchart were no doubt in my personal file. I won't attempt to pick out what I considered personal correspondence of what was in my personal file. It has been a long time ago; these personal letters of Mr. Butchart were no doubt in my personal file. Business correspondence was no doubt in the company file. Upon examining these letters and noting the numbers of the exhibits I would say that number 98 is a company letter. I should think that Exhibits 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95; 96 and 97 were in my personal file. I think Mr. Boettcher was in San Francisco when I received the final payment of his commitment. I am not sure of this and I think it was a few days prior to the day of incorporation of the new company. I think I went to Reno, Nevada, to file the incorpo-

(Testimony of Aman Moore.)

ration papers immediately after Mr. Boettcher's final commitment was paid in. I identify this telegram as one sent by me." [191]

The same was marked Defendants' 11 and introduced in evidence.

Thereupon the witness was shown certain other letters, particularly letter written by Mr. Wirt Minor to Mr. Aman Moore, dated July 25, 1916, and which the defendants desired to and offered in evidence. To this letter the attorney for the United States objected upon the ground that the same was immaterial and the Court sustained the objection, and to this ruling the defendants excepted and the exception was allowed, which said letter is as follows:

"July 25, 1916.

Mr. Aman Moore,  
c/o Mr. Coy Burnett,  
Lewis Building, Portland, Oregon.

Dear Sir:—

I am in receipt of communication dated July 24th addressed to the Directors of Oregon Portland Cement Company and signed by yourself, in which you demand that an immediate directors' meeting be called for the purpose of obtaining various data from the parties named; that is to say, Mr. R. P. Butchart, Mr. Newlands, Mr. Macdonald, Mr. Clark M. Moore and Mr. Ballard to the end that the suit may be instituted under the Federal 'Treble Damage Statutes' for the damages sustained by the Com-

pany through alleged illegal agreement on the part of the gentlemen above named.

This matter was brought before the Board informally at its last meeting and you were requested by myself to state what action you desired to take but for some reason you did not see fit to do anything whatever.

The by-laws of the corporation, Article IV, Section 4, provide that [192]

‘Special meetings of the board of directors shall be called by the Secretary when he is requested so to do, by the president, on three days’ notice to each director.’

Special meetings shall be called in like manner on request of a majority of the members of the board. You are aware that the president of the corporation is now absent. You yourself are one of its vice-presidents. Section 2 of Article VI of the by-laws provides that

‘In the event of the absence of the president, one of the vice-presidents shall exercise the powers and perform the duties of the president during such absence, subject to the advice and control of the board or of the executive committee.’

You therefore, have it in your power to call this meeting and I shall be pleased to have you do so. If you are not willing to take the responsibility of calling the meeting I am perfectly willing to be one of a majority of the board to call such meeting. It will require this call to be signed by five of the

directors. Mr. Butchart is away; Mr. Bates has tendered his resignation, but it has not been accepted as yet at your instance; Mr. Wilson has tendered his resignation, but the same has not yet been accepted; and Mr. Johnson is away. It will, therefore, be necessary for you to be one of the five directors to join in the call.

If you desire to have the meeting called, as suggested, and will come to my office I shall take pleasure in preparing the call and in signing it. I do not know, however, whether Mr. Butchart and Mr. Newlands who are charged by you with malfeasance in office will consent to sign such call or not; if not, you will have to procure the signatures of Messrs. Wilson and Bates.

As Mr. Butchart and other directors are charged with malfeasance in office, I think it will be but reasonable that the meeting when called shall be called for such time [193] as to give these parties an opportunity to attend and respond in person.

Yours very truly,

WIRT MINOR."

WM/R.

Thereupon the defendants offered to identify by this witness for the purpose of introducing in evidence, and when identified to introduce in evidence, a letter from Wirt Minor to the witness dated August 29, 1916, and to this letter the attorney for the United States objected upon the ground that the



same was immaterial and the Court sustained the objection and refused to allow the said letter to be identified or to be introduced in evidence, and to this ruling the defendants excepted and the exception was allowed. Said letter so offered is as follows:

“August 29, 1916.

Mr. Aman Moore,  
Oswego, Oregon.

Dear Sir:—

As one of the directors of the Oregon Portland Cement Company and as one of its general attorneys or counsel, I hereby demand that you afford me an opportunity to investigate the facts upon which the suit brought by you in the name of the Oregon Portland Cement Company is based. In connection with this demand I also demand that you afford me an opportunity to examine all the evidence from which these facts have been deduced or inferred.

I also desire you to advise me by what authority this action was commenced for, as you are aware, it was commenced without consulting the Board of Directors. I should be pleased to confer with your attorneys at any time regarding the matter and to examine the evidence in their offices [194] and to this end I am sending a copy of this letter to each of your attorneys of record.

I will add that I have been requested to take this

(Testimony of Aman Moore.)

step by several of the directors of the corporation.

Yours truly,

WIRT MINOR."

WM/MH.

The witness further testified: "I said that a part of the delay in organizing the corporation was caused by Mr. Butchart failing to pay his commitment. He was next to the last and Mr. Boettcher was the last to pay. Mr. Butchart was willing to pay provided Boettcher paid and Mr. Boettcher was willing to pay provided Mr. Butchart paid and it dragged along for a period of nearly three years that way. I recognize the letter which you show me. The original letter was written and signed by me. The letter is to Mr. R. J. Morse. He was manager of the Cement Securities plants. He didn't attend to Mr. Boettcher's business at all. He was a protégé of mine in years previous and a personal friend. I corresponded with him in regard to Mr. Boettcher's commitment to the Oregon Portland Cement Company and Mr. Morse was out here a couple of times in connection with the organization of the Oregon Portland Cement Company's business. In this letter I stated: 'The second proposition for Mr. Boettcher to decide is a matter of a selling contract with the Balfour-Guthrie Company here to handle our output. I do not want to be quoted as making any definite statements, but I believe they would contract to sell our output on a basis of ten cents per barrel margin to them for taking the account,

(Testimony of Aman Moore.)

and in closing such a contract would possibly subscribe [195] \$50,000 to our company. Further, they would draw a line at, say, Centralia, Washington, as a dividing point for the Bellingham cement and our own, i. e., they would handle Bellingham cement north of a certain point in Washington, and handle our cement south of that point and throughout Oregon territory. I believe this would serve as a very important factor in maintaining prices here on the coast, as the Bellingham plant withdrawing from Oregon would be able to renew the old agreement with the California plants to withdraw from the Puget Sound territory, which would leave the market here to the California plants and ourself. The California plants in the past have conceded the output of 2,000 barrels a day to ourselves in event we should build a two-kiln plant. The negotiations with the Balfour Guthrie Company are only in a preliminary stage, although they have been discussed on several occasions in the past. Absolutely nothing can be done with them until we are fully financed and construction work resumed. They would not subscribe a dollar under present conditions or under any conditions other than with our plant a going concern.' I also recognize the letter signed by me and written to R. J. Morse, secretary and general manager of the Colorado Portland Cement Company dated Tuesday, May 19, 1914." Thereupon the defendants offered in evidence paragraphs 1 and 4 of said

(Testimony of Aman Moore.)

letter marked Defendants' Exhibit 15, and the same was read to the jury.

The witness further testified: "Mr. Wilcox referred to in that letter was a business man, a stockholder of the company. I don't recall when I first knew Mr. Butchart was connected with the Washington mill, the Coats mill. I don't remember [196] testifying on the former trial when I first heard that he was connected with that Company. I did testify upon the last trial of this case as follows: 'Q. Did you know that Mr. Butchart was interested in the Washington mill? A. I am not positive about that: I don't know whether he was at that time or not. Q. When did you first learn that he was interested in the Washington mill? A. About the time we started the work here at Oswego the last time. Q. That was when, Mr. Moore? A. 1915 or '16; I don't know the exact date.' "

Upon redirect examination the witness testified: "I recognize the copy of letter of Denny-Renton Clay and Coal Company, dated March 6, 1916, my answer to the same dated March 11 and their reply dated March 13, 1916."

The same was offered in evidence marked Exhibit 103 and read to the jury.

The witness further testified: "Upon the former trial of this case in connection with the sale of some cements at a higher price than others, I testified as follows: 'Q. Why it could be marketed and sold at a higher price than any other cement? A.

(Testimony of Aman Moore.)

Yes, sir, it has the quality of being almost immune from attack from sea water due to the fact of its high iron content and low aluminum content. In construction work in sea walls or any marine construction, the cement would be given preference by proper engineers who understood that fact.' And upon said trial I also testified in regard to the boundary line on the east fixed as the Des Chutes river as follows: 'Q. Now what was the territory allotted to the sales of the Oregon Portland Cement plant in accordance with the agreement as given to you by Mr. Butchart? A. The Willamette [197] valley and they were permitted to sell in central Oregon. Q. That is the Columbia River on the north? A. Yes, sir. Q. And the Des Chutes on the east? A. On the branch lines extending south; there may have been one branch line or two further to the east than the Des Chutes; that is the Heppner branch, I think, was included in the territory. Q. And about Drain on the south do you say? A. Some point about Drain.' I think the United States District Attorney first learned the facts within my knowledge concerning the cement combination on the morning of August 29, 1916, the day after the action was filed in the Federal Court. Mr. Reames was the District Attorney at that time."

Thereupon attorneys for the defendants moved the Court to instruct the jury to disregard all correspondence between Aman Moore and R. P. Butchart prior to the time Clark M. Moore was elected



(Testimony of Aman Moore.)

sales manager in considering this case in reference to the guilt or innocence of Clark M. Moore and that correspondence passing between Mr. Butchart and Mr. Aman Moore should not be considered in arriving at a verdict as to the guilt or innocence of said Clark M. Moore.

Thereupon the Court stated: "Of course any statements or admissions Mr. Butchart made before Mr. Moore became connected with this company would not be competent as admission of guilt against Clark M. Moore, but would be competent for the purpose of showing the status of the Company and the condition at that time, and the admission made against the interest of Mr. Butchart."

**Testimony of A. F. Coats, for the Government.**

Thereupon A. F. COATS was called as a witness for the United States and testified as follows:  
[198]

"In 1914, 1915, and 1916 I was in the cement business in Seattle, president of the Washington Portland Cement Company. In the year 1914 I sold our cement in the state of Oregon. In 1914 the price fluctuated all the time. We had no stable price. I think cement went up in price in July, 1914. This was caused by an understanding between us, reached in Portland or San Francisco at which there were present Mr. Cameron of the Olympic Portland Cement Company, Mr. Eden of the Superior Portland Cement Company, and Mr. Muhs of the Santa Cruz and Standard Portland Cement

(Testimony of A. F. Coats.)

Company. I do not recall whether any other California companies were there or not. I don't think Mr. Cameron of the Standard Portland Cement Company was present. I am not sure whether Mr. Erlin was there or not, but think he was. This conference took place in June or July, 1914. At this conference the naming of the price for the state of Washington was assigned to the Washington plants. I do not remember what they put the price at. The California companies were to make the price in Oregon and were not to sell cement in any quantities in Washington. They were not selling cement to speak of at that time in Washington. The Washington plants were to name the prices in the state of Washington and the California companies were to stay out of there. In Oregon and Washington plants were not to ship south of Salem. From that time on we continued to ship cement into Oregon north of Salem until in January, 1916. At that time I closed my office and quit taking business in the State of Oregon. There were no further conferences about that subject. I think there was a meeting or conference held in December, 1915, at which the California plants and the Washington plants were represented. [199] The parties present were substantially the same as those present at the previous meeting in 1914 and at this meeting the Washington companies were told to get out of Oregon, so told by the California companies. There was no discussion, the Washington plants were merely told to beat it and they did. I

(Testimony of A. F. Coats.)

have known R. P. Butchart about twelve years. He had about a thousand shares in the Washington Portland Cement Company of the par value of \$1.00 each. I think he became a stockholder in that company in 1913. I was not told by the California companies directly to get out of Oregon and stay out, but Mr. Cameron of the Balfour-Guthrie people was told and it had been intimated all the time to us that we must do this. The California people referred to were Cameron and Muhs of the Santa Cruz Company, the same Muhs who was active in preventing the Spokane plant from getting the interstate bridge cement. Mr. Cameron was also with the Standard as well as the Santa Cruz. The Henry Cowell Lime & Cement Company was also interested in running us out of Oregon. Mr. George was connected with that Company. There was no one else active in the matter that I recall. I don't remember being at luncheon or dinner in Portland, Oregon, some time about the first of 1916 with Mr. C. W. Nottingham and Mr. Butchart "

Upon cross-examination the witness testified: "I was the controlling stockholder of the Washington Portland Cement Company. Its capital stock was one million four hundred thousand dollars and its bonded debts two hundred and fifty thousand dollars. Mr. Butchart was never a director of this company nor an officer. Mr. Clark M. Moore was never interested in this company. The first meeting to which I have testified [200] was in 1914, held either in San Francisco or in Portland. The

(Testimony of A. F. Coats.)

only persons present at that meeting that I recall were Mr. Eden, Mr. Cameron of the Olympic, Mr. Muhs and myself. I don't remember Mr. Cameron of the Santa Cruz being there and Mr. Henshaw was not there to my knowledge. Mr. Butchart was not at that meeting nor was Mr. Clark M. Moore. The next meeting about which I testified occurred in December, 1915, in San Francisco. All three of the representatives of the Washington companies were there, Eden, Cameron and myself. I don't recall Mr. Rogers of the Lehigh being there nor Mr. Irwin of the International. Neither Mr. Butchart nor Mr. Clark M. Moore was there. I think Mr. Cameron of the Santa Cruz was there as well as Mr. Muhs. Neither Mr. Rogers of the Lehigh nor Mr. Irwin of the International were there that I know of. I am not sure whether Mr. George was there or not. I was a member of the Portland Cement Association. The meetings to which I have testified were not meetings of the Portland Cement Association and only meetings of the parties whom I have mentioned and these meetings to which I have testified had nothing to do with the Portland Cement Association. I was a member of the Portland Cement Association as long as I was in the cement business. I don't think I made any objection to this demand on the part of the California people to get out of Oregon. We were protecting our own market up in Washington. The Oregon market was never any good so far as I was concerned. While I was in business prices fluc-

(Testimony of A. F. Coats.)

tuated all the time. The cement manufacturers had to do a banking business for the contractors during that time and this did not interest me because we would lose so many accounts; the percentage of loss was too great. I don't think I ever [201] told Mr. Butchart or Mr. Clark M. Moore anything about the meeting which was held in 1914; did not tell them about any meeting held in 1915. I think I never discussed either prices or territory with Mr. Butchart or Mr. Clark M. Moore. I have never seen Mr. Butchart at any meeting, Association meeting or any kind of meeting. I saw Clark M. Moore at Association meetings in Chicago and New York at which I was representing my own interests and the Washington Portland Cement Company and he the Boettcher interests. I was never present at any meeting at which Mr. Butchart and Clark M. Moore or either one of them was present at which the question of where the Oregon Portland Cement Company should sell its product or the prices at which it should sell its product was discussed. I did not know any officers of the Oregon Portland Cement Company except Mr. Butchart and Mr. Clark M. Moore. I knew Aman Moore but just to speak to him."

Upon redirect examination the witness testified: "I never discussed prices or territory with Mr. Butchart at all in my life at any time or place. His plant in British Columbia was about 150 miles from my plant. I saw him quite often, several times a year I expect and I never discussed with



(Testimony of A. F. Coats.)

Mr. Butchart territorial arrangements in any way. He had \$100,000.00 worth of stock in my company and also \$50,000.00 in bonds but he didn't go to any stockholders' meetings. I was one of the defendants in this case."

**Testimony of C. W. Nottingham, for the Govern-  
ment.**

Thereupon C. W. NOTTINGHAM was called as a witness for the United States and testified as follows:

"I have lived in Portland for nearly forty years; have been in the building material business and have bought and sold cement. I cannot say with certainty from whom [202] I bought cement in 1915. I think before the Oregon Portland Cement Company began making cement we purchased mostly from the Pacific Portland Cement Company. I know Mr. Coats of the Washington Portland Cement Company and I think I have met R. P. Butchart. I frequently had luncheon with Mr. Butchart and Mr. Coats, but I don't remember the date of the same or whether I had a luncheon or dinner with Mr. Butchart and Mr. Coats at or near the first of the year 1916. Whenever they would come to town we would go out and get lunch together nearly always. I think I had lunch with these two gentlemen sometime near the first of January, 1916. In the course of this lunch it is my recollection that Mr. Coats said that Mr. Butchart being a stockholder in the Washington Port-

(Testimony of C. W. Nottingham.)

land Cement Company and also in the Oregon Portland Cement Company that the goods could be delivered so much more economically from Oswego than it could from Washington that we would probably be supplied by them in the future. I think Mr. Butchart was present at that conversation."

Upon cross-examination the witness testified: "I am not sure of the date of that luncheon. I have no way of fixing the date. I don't remember where the luncheon was held. I don't remember whether anyone was present beside Mr. Butchart, Mr. Coats and myself; there might have been. All I remember is of being there and all I remember was said is what I have testified to."

### **Testimony of W. H. George, for the Government.**

Thereupon W. H. GEORGE was called as a witness on behalf of the United States and testified as follows:

"I am secretary and general manager of the Cowell Portland Cement Company with its plant at Cowell, Contra [203] Costa County, California, with its head office at San Francisco. I have been in that business since the company was organized in 1906 or 1907. I recognize this telegram and letter, the telegram confirmed by the letter, as my letter."

Thereupon the telegram and letter were marked Exhibit 104 and offered in evidence. The defendants objected to the letter and telegram not only

(Testimony of W. H. George.)

on account of their date in 1915 but because it was incompetent, irrelevant and immaterial, but the court overruled the objection and an exception was taken and allowed and the letter and telegram were introduced in evidence and read to the jury.

Thereupon the witness identified certain correspondence between Carl Leonardt of the Southwestern Portland Cement Company and the witness and the same was offered in evidence marked Exhibit 105. To this correspondence the defendants by their attorneys objected upon the ground that it was correspondence between Carl Leonardt of the Southwestern Cement Company and the witness, that Carl Leonardt was not a director of the Oregon Portland Cement Company and that the correspondence is not competent, but the court overruled the objection and to this ruling the defendants excepted and the exception was allowed, and thereupon the correspondence was introduced in evidence and read to the jury.

Upon cross-examination the witness testified: "This correspondence covers the period from February 1 to February 7, 1916. I do not think I met Mr. Butchart about that time. I have seen Carl Leonardt quite frequently. I do not remember whether he was around at that time or not. I only met Mr. Butchart once. This was casually at the Palace Hotel when I was introduced to [204] him. I never met him after that time when I saw him at the Palace Hotel until here in Portland a year ago. When I met him at the Palace

(Testimony of W. H. George.)

Hotel it was a casual meeting. I was passing through the place and somebody introduced me to him and we passed the time of day—that is all. I do not know of any meeting of the cement manufacturers at that time at the Palace Hotel. I never at any time or place had any meeting with Mr. Butchart in which there was any discussion in regard to the affairs of the Oregon Portland Cement Company or in regard to how or where or at what price they should sell their produce. I have no correspondence with him about it. The correspondence with Carl Leonardt above referred to—I remember the matter that I wanted to talk to Mr. Butchart about at that time. I wanted to secure the sales agency for the Oregon Portland Cement Company for Portland and for Oregon but I never saw him about it; that was all that I wanted to see him about.”

**Testimony of C. W. Halderman, for the Government.**

Thereupon C. W. HALDERMAN was called as a witness for the United States and testified as follows: “I live in Astoria and have lived there for twenty years. During that time I have bought and sold cement. Early in 1914 I purchased from the Henry Cowell Lime & Cement Company, the Mt. Diablo people. Later in February I purchased one lot I think from the Standard Cement Company. They are both California companies. I also purchased some Olympic cement in that year.

(Testimony of C. W. Halderman.)

For the cement I have bought from the Henry Cowell Line & Cement Company I paid \$2.48. That was very early in the year. Later in the year I bought some cement from the Standard people for \$2.10 and I paid \$2.10 for the Olympic cement which I bought. I bought California cement until some time in [205] 1915 and then I bought from the Washington Portland Cement Company. At the time this change was made I was handling cement from the Riverside Cement Company and this company was selling cement to the Oregon Highway Commission for a concrete road. My arrangement with the Riverside people was advantageous because the cement went over our dock for this contract and we were allowed to take from the stock as it went over such cement as we needed. When that contract was completed or shortly thereafter the Riverside people withdrew from that market and I then purchased from the Washington people. The Riverside people would not sell to me any longer there. I continued to buy Washington cement until 1916, some time in June I think, when I received the first shipment from the Oregon Portland people. The occasion for this change was that the Washington people advised that they could no longer sell me cement in that territory. I was paying the Washington people \$2.30. For the purchase I made from the Oregon people I paid \$2.58. California cement came to us in all manners; some shipped from Portland by rail, some came by boat which



(Testimony of C. W. Halderman.)

was landed at our dock, some came from the Great Northern Steamship Company landed at Flavel and transferred across to Astoria. I know nothing of any cement taken from the boats at Flavel other than the shipments consigned to me. I cannot recall that I had any via Flavel after June, 1916 and I believe I had no shipments by boat after that date at Astoria. I recognize this letter marked Exhibit 106 as taken from our files."

The letter was thereupon introduced in evidence and read to the jury.

"I also recognize this letter as taken from our files." [206]

The letter was thereupon marked Exhibit 107, introduced in evidence and read to the jury.

"I also recognize this letter as taken from our files."

The same was marked Exhibit 108, introduced in evidence and read to the jury.

"I also recognize this letter taken from our files."

The same was marked Exhibit 109, introduced in evidence and read to the jury.

"I am not sure whether the letter of June 30th from the Cowell Lime & Cement Company regarding prices at Warrenton indicates a change over the former price at Warrenton. I think the prices changed all over at that time, not only at Warrenton but at other points as well."

Upon cross-examination the witness testified: "My recollection is that the first cement I purchased from the Oregon Portland Company was

(Testimony of C. W. Halderman.)

on June 26, 1916, probably 110 barrels. My best recollection is that I paid \$2.58 but I had a contract with the Western Paving Company for three thousand barrels at \$2.10 and the Oregon Portland Cement agreed to sell me three thousand barrels at \$2.10 and possibly their first shipment was applied on that contract. I didn't receive the shipment of three thousand barrels at \$2.10 on that day but they agreed to fill this three thousand barrel order which I had with the Western Paving Company for \$2.10 and I was to deliver to the Warren Paving Company as they needed it. For all other cement I was to pay them \$2.58. I got a shipment of 150 barrels from the Oregon Portland [207] Cement Company to be delivered at Seaside. It was used in the construction of the High School at Seaside. I think it was a two-car order. I cannot tell you offhand what the price of that cement was nor the date upon which it was received. My recollection is that I was to pay \$2.35 but this is just a guess. After I commenced to buy from the Oregon Portland Cement Company I purchased a small amount from the Olympic which was used in the construction of the buoy station. I paid \$2.10 for that and all the rest that I bought I bought from the Oregon Portland and I think the purchase for the buoy station was prior to the time that I was purchasing from the Oregon. The price I paid the Oregon was \$2.58 with the exception of the three thousand barrels which they agreed to furnish at \$2.10. I

(Testimony of C. W. Halderman.)

don't recall buying cement from them in September at \$2.30. I got from the Oregon a commission of ten-ten, that means twenty. I was allowed a commission of 20 cents a barrel. The freight rate from Portland to Astoria at that time was to be exact 28½ cents. I think the freight rate to Warrenton was about 15 cents more, 15 cents a barrel. I got my cement from Portland in car-load lots by rail. I also had an allowance for sacks. The \$2.58 was \$2.58 less 20 off and less an allowance of forty cents a barrel for sacks. The prices I have received from all cement companies have been uniform when I was able to purchase the cement. There were companies that wouldn't quote me at all but those who did quote me always quoted the same price with one exception."

**Testimony of J. M. S. Hawthorne, for the Government.**

Thereupon J. M. S. HAWTHORNE was called as a witness for the United States and testified as follows: [208]

"I live in Astoria; am assistant manager for George W. Sanborn & Sons, who are in the building material business and deal in cement and have dealt in cement since 1914. Our first purchase of cement was in July, 1914, from the Pacific Portland Cement Company, a California company. In 1915 we purchased from that Company and also from the Santa Cruz and Cowell companies, also

(Testimony of J. M. S. Hawthorne.)

California companies. In 1916 we purchased from the Pacific Portland and the Santa Cruz. We did not purchase from the Oregon Portland Cement Company until 1918 but got quotations from them in 1916. The only quotation we received I think was that dated July 26, 1916."

The witness thereupon produced a letter and contract from his files which he identifies as the quotation referred to and the same was offered in evidence marked Plaintiff's Exhibit 110 and he produces another paper which is offered in evidence and marked Plaintiff's Exhibit 111 and another paper which is marked Plaintiff's Exhibit 112, and a further paper marked Plaintiff's Exhibit 113, all of which papers are introduced in evidence and read to the jury.

"The notations in red ink and underscored were made by me in our office. The cement referred to in Exhibit 112 was delivered to us by water. The works are at Cement, California. I don't think that there was any difference between the water freight rate from San Francisco to Portland and the water freight rate from San Francisco to Astoria."

Upon cross-examination the witness testified:

"The price under this contract, January, 1916, was \$2.30 per barrel f. o. b. carload lots at Astoria. The quotation from the same Company on June 29, 1916, was \$2.58 [209] f. o. b. dock or cars. I judge there was an advance in price. Looking at the contract I see that there is a clause which

(Testimony of J. M. S. Hawthorne.)

does provide the Company has a right to raise the price. This clause is as follows: 'Seller may change the price of cement or price of sacks named in this contract, by giving notice to the buyer, provided seller shall protect any *bona fide* contract of resale for actual use in any certain building or construction work taken (at prices then in force) prior to the receipt of such notice, after inspection of such contract by the Seller.' I got cement from Santa Cruz by water landed at our dock. I had a concession of a wharfage storage charge of 10 cents a barrel and I had a dealer's commission of 10 cents a barrel. There were no other commissions during 1916. I also bought from the Pacific. We had probably bought from the Pacific before that time, June, 1916, but I don't recall any exact purchase. Cement bought from the Pacific also came by water and I had the same allowance for dockage from this Company. I don't recall any purchases from the Pacific for Seaside, Warrenton and Fort Stevens. My contract with the Santa Cruz was for Astoria only and possibly the immediate vicinity. The contract mentions Astoria only. The contract which I got from the Pacific was for use not only at Astoria but for other places in the immediate neighborhood. The first rail freight rate that I recall from Portland to Astoria was 7½ cents per hundred pounds. This was probably in 1914. This would be about 28 cents a barrel. This freight rate continued until the freight rates were largely increased by



(Testimony of J. M. S. Hawthorne.)

the United States Railroad Commission—I think in August a couple of years ago. I could not say what the freight rate is from Portland to Seaside nor the freight rate from Astoria to Seaside nor [210] from Warrenton to Portland nor from Astoria to Warrenton nor from Portland to Gearhart nor from Astoria to Gearhart. The letter in evidence from the Pacific Portland Cement Company says that the increased price was due to increase in freight rates. I don't know anything about this increase in freight rates. We accepted their statement regarding it and made no investigation."

**Testimony of A. Gilbert, Jr., for the Government.**

Thereupon A. GILBERT, Jr., was called as a witness on behalf of the United States and testified as follows:

"I am in the real estate, insurance and building materials business at Seaside, Oregon, and handle cement. In 1914 and 1915 I handled Santa Cruz cement, a California product. We have handled Santa Cruz cement ever since. We never handled any Oregon cement. A quotation was made to me by the Oregon Company but I did not buy any of their cement. This paper is an invoice from our files."

The same is offered in evidence marked Exhibit 114 and read to the jury.

"This letter also is from our files."

The same is introduced in evidence marked Exhibit 115 and read to the jury.

(Testimony of A. Gilbert, Jr.)

Upon cross-examination the witness testified:

"In 1915 I got some cement by the steamer Daisy Freeman. It runs either from San Francisco or Santa Cruz to Portland. I usually got my cement from Santa Cruz by water from Portland. The freight rate from Portland to Seaside as I recall it at that time was 15 cents a hundred. From Portland to Astoria is about 100 miles and from Astoria to Seaside is about 20 miles. I don't know anything about the freight rates on these steamers coming up from California except from hearsay. Usually I got my cement from Portland [211] and the price was based on the Portland price. I got quotations from the Oregon Portland Cement Company. They solicited my business. Some man came down to see me, one man was down in 1916 and they have been down there five or six times. I think there was one down there in 1914 and one in 1915 but I am not sure. I don't know who he was; he solicited my business but I didn't give it to him. At that time I was content with my relations with the Santa Cruz."

**Testimony of F. S. Clark, for the Government.**

Thereupon F. S. CLARK was called as a witness on behalf of the United States and testified as follows:

"In 1914 and 1915 I was purchasing agent for the Spokane, Portland & Seattle Railway with an office in the Pittock Block in Portland. I bought cement from all the different companies, Washing-

(Testimony of F. S. Clark.)

ton and California at different times. I continued as purchasing agent until October, 1917, I couldn't say from whom I purchased cement after 1916 or after April, 1916. There was a change; from some of them we couldn't buy. I think the Washington companies withdrew from the territory and some of the California people did, too. I recognize this letter. It was received by me in the ordinary course of business."

The same was offered in evidence marked Exhibit 116 and read to the jury.

"While I was purchasing agent quotations were usually the same from all companies."

Upon cross-examination the witness testified:

"I bought cement for five railroads; the Spokane, Portland & Seattle, United Railways, Oregon Electric Railway, Oregon Trunk Railway and Pacific & Eastern Railway. They all belong to the S. P. & S. system. Pacific & Eastern Railway runs out of Medford east; the Spokane, Portland & [212] Seattle runs from Portland to Spokane, most of the way through Washington. I did not buy from the Oregon Portland Cement Company prior to July, 1915. I think it was 1915; I am not able to say. I don't remember the date; it may have been not until July, 1916. The cement I purchased from the Oregon Portland Cement Company was used in Portland on the Oregon Electric Railway making repairs to tracks used in putting down culverts, relining tunnels, repairing tunnels;—anything of that description, and used on all the railroads. It

(Testimony of F. S. Clark.)

was used on the Spokane Portland & Seattle between Portland and Spokane in Washington during 1916. I think I paid \$2.20 or \$2.30—both probably; in 1915 I paid \$2.30 in August. It was \$2.30 when delivered on cars and \$2.20 f. o. b. dock; some companies charged 10 cents for loading on the cars and others 8 cents. Sometimes we bought f. o. b. cars, sometimes on the dock. In 1916 we were paying \$2.10 and \$2.20 in January and May. For different shipments in the same month, both in the month of January, we paid \$2.10 and \$2.20. It was bought from the Cowell Lime & Cement Company and the Washington Portland Cement Company. I presume I bought later on in 1916 as I was buying all the time. I don't remember the price; all the companies charged practically the same price. I got their quotations. As our railroad was a steam railroad we got a lower price than the dealer I presume. I never asked what the dealer's price was. In Exhibit 116 the Washington Company gives as the reason for not supplying us with cement the extreme shortage of cars. I couldn't say as to that; I had nothing to do with it. There was at different times in 1916 a shortage of cars. I heard complaints of it. Whether it was actually so or not I [213] couldn't say. That must be ascertained from the Traffic Department. Shippers of cars had preference in that matter in shipments. Cement was usually delivered at the dock in Portland. We bought in such quantities as we had occasion to use. When delivered in car-

(Testimony of F. S. Clark.)

load lots it was delivered some to the dock or to drays if we wanted to ship it around town. If we wanted to ship it around town we had to pay the drayage. I don't remember what the drayage was. I couldn't say whether the drayage was **uniform**. I don't think so; I think it depended upon who we got to handle it."

**Testimony of F. W. Erlin, for the Government.**

Thereupon F. W. ERLIN was called as a witness on behalf of the United States and testified as follows:

"I am secretary and sales manager of the Pacific Portland Cement Company whose factory is at Cement, California, and my place of business is at San Francisco, California. Cement is about 50 miles east of San Francisco and about 50 miles from the dock. In shipping cement from the California plant to a point in Oregon by water it would be brought by rail from our plant to the dock at San Francisco and then by water to Portland. If shipping from Cement, California, to Corvallis, Oregon, it is possible that we would load at the mill of the cars, transfer it by rail 50 miles to the dock. That would be one method of shipping the cement. The cement might also move by rail all the way to Corvallis. If shipped by water when it reached San Francisco it would be loaded on the boat, brought to Portland and reloaded on cars to be hauled to Corvallis. If it didn't come by water it would come direct by rail from our mill to Corvallis over the



(Testimony of F. W. Erlin.)

Southern Pacific. I have occupied my present position with the Pacific Portland Cement Company since 1907. I recognize this letter with telegram attached. I wrote the [214] letter and the telegram."

The same were offered in evidence marked Exhibit 117 and read to the jury.

"I also recognize this paper as from our files. I prepared and signed it."

The paper referred to is offered in evidence marked Exhibit 118 and read to the jury.

"I also recognize this paper as from our files and signed by me."

The paper referred to is offered in evidence marked Exhibit 119 and read to the jury.

"I also recognize this paper as from our files."

The paper referred to is offered in evidence marked Exhibit 120 and read to the jury.

"I also recognize this letter; it was written by me."

The letter is offered in evidence marked Exhibit 121 and read to the jury.

"I also recognize this as one of our documents."

The instrument referred to is offered in evidence marked Exhibit 122 and read to the jury.

"I recognize these telegrams and this letter. I think the pencil memorandum on the left on the letter is in the writing of the manager of our Portland office."

The correspondence but not the pencil memorandum, which was identified by the witness, was of-

(Testimony of F. W. Erlin.)

ferred in evidence marked Exhibit 123 and read to the jury.

Upon cross-examination the witness testified:

“I personally know Clark M. Moore; have known him probably six or seven years at least. When I first met him he was connected with the Colorado Portland Cement Company. [215] I remember meeting him in connection with the Portland Cement Association. I don't think he was ever an officer of the Association. He may have been; I don't recall it. If the records show that at one time he was one of the executive committee that would not make him an officer. I met him in New York and San Francisco. I think he was representing the Colorado Portland Cement Company. I don't know whether he came back to Portland after he received the letter from me to the Oregon Portland Cement Company addressed to Clark M. Moore at Denver, in which I asked him when he comes back to Portland to come via San Francisco. I don't recall whether he came to Portland after receiving that letter or not. I couldn't say whether he came via San Francisco on that particular trip. I cannot say whether I had any talk with him in San Francisco at that time if he did come that way. I have had several talks with him at different times. I have had some talks with him after he became sales manager of the Oregon Portland Cement Company in San Francisco and in Portland also. In these talks we may have discussed the territory in which the Oregon Portland Cement

(Testimony of F. W. Erlin.)

Company should sell its product and the prices at which they should sell. We discussed general business and quite likely we discussed territory and prices. I have no recollection as to when any of these conversations took place nor who was present. There were never any discussions of these matters at meetings of the Portland Cement Association. If I had talks with Clark Moore about these matters it was in private conversation. Other parties may have been present; I don't recall. I don't know who the Bellingham concern is that is mentioned in one of these letters. I don't know whether we did business with them or not. I don't [216] remember the name at all. Our business in Washington was done in part from the Portland office. Our agent in Portland was Mr. Statter. I don't recall how it came about that I wrote this letter, Exhibit 122, nor do I recall anything about the cause of writing the letter Exhibit 118. I don't know whether I got any answer from Clark M. Moore. I don't know where these letters came from. The Government presumably got them from our files. I was not present when they were taken. They never came from our files; they must have come from Mr. Moore's files, addressed to him at Denver. The other letters which were introduced in evidence quite likely came from our Portland office files. Some of them are carbons or copies of letters. They presumably came from our Portland files too. I think our Portland office was called upon to furnish their files. I don't think I

(Testimony of F. W. Erlin.)

said I had any talk with Clark M. Moore regarding prices or territory. I said I discussed general business conditions with him. If I did have any talk with him I did not make any agreement with him in regard to the territory in which or the prices at which cement should be sold. We made prices upon our own product at various points from time to time which I called list prices. They were naturally quoted in response of any inquiry. They were prices made by ourselves without consultation with any other people. We made our own prices on our own products. In shipping from our plant to Portland we shipped either by rail or by water. Most of our cement was brought in by water and rail, by rail to the dock at San Francisco and by water from San Francisco to Portland. If the cement was to be delivered in the southern part of the state it would quite likely come by rail. The controlling feature as to whether [217] it should be transported by water or by rail was the cost of transportation. I am not familiar enough with freight rates to say at what point the rail and water transportation would be cheaper and what point the rail transportation would be cheaper in Oregon. I had no agreement with anybody in regard to the prices at which we should sell our cement or the territory in which we should sell the same. We had no agreement with anybody in regard to where they should sell their cement or the prices at which they should sell their cement. I don't recall the circumstances about that Bellingham matter in

(Testimony of F. W. Erlin.)

which I say: 'As we understand the present list price of Washington mills is \$2.30 f. o. b. Bellingham. We have telegraphed you that it is quite in order for you to quote as you desire.' It is likely that I felt that that was the price which we wanted for our cement."

**Testimony of E. W. Charles, for the Government.**

Thereupon E. W. CHARLES was called as a witness for the United States, and testified as follows:

"In 1914, 1915 and 1916 I was Chief Clerk in the Bureau of Purchases and Stores in the City Hall of Portland, Oregon, employed by the City of Portland. When bids came in for cement I opened them at the proper time, tabulated them and passed them on to the purchasing agent. I recognize this group of papers. It is a tabulation of bids made by me for the city of Portland."

The papers were offered in evidence marked Exhibit 124, those of them which antedate 1916, subject to the objection of the defendants that they were incompetent and irrelevant because they were prior to the time of the organization of the Oregon Portland Cement Company. They were all marked Exhibit 124 and read to the jury.

"This is another tabulation made by me of bids [218] received by the city."

The same was offered and received in evidence, marked Exhibit 125 and read to the jury.

"This is still another tabulation made by me."



(Testimony of E. W. Charles.)

The same was offered in evidence marked Exhibit 126 and read to the jury.

“This is another tabulation made by me of bids received by the City of Portland.”

The same was offered in evidence marked Exhibit 127 and read to the jury.

“This is another tabulation of bids received by the City of Portland,—no bids received by the City of Portland. There doesn’t appear to be any tabulation.”

The same was offered in evidence marked Exhibit 128 and read to the jury.

“This paper is also cement bids received by the City of Portland.”

The same was offered in evidence marked Exhibit 129 and read to the jury.

The cross-examination was waived.

### **Testimony of W. J. Morris, for the Government.**

Thereupon W. J. MORRIS was called as a witness on behalf of the United States and testified as follows:

“I live in Portland and have lived there for about thirty years. I am purchasing agent for the Portland Railway, Light & Power Company and have been for eight years. As purchasing agent I bought cement for this company. In 1915 I bought from Balfour-Guthrie & Company, Cowell, Santa Cruz and the Pacific and other companies—I am not quite sure. In 1916 I bought from Balfour-Guthrie, Santa Cruz and from

(Testimony of W. J. Morris.)

the Oswego Cement Company. In 1915 the price quoted by these various companies was \$2.30 and \$2.35, and [219] I think, two cases at \$2.20. In 1916 we paid \$2.30 and \$2.20. After about June, 1916, we didn't buy any cement from anyone except the Oswego people. I had opportunities to compare prices; my recollection is their price was the same as other companies."

Upon cross-examination the witness testified:

"After June, 1916, we felt we should purchase from the Oswego plant as they were a home industry and their price as good as that of any other company. I bought some in 1916 at \$2.20. This was ten cents lower. This was the gross price you understand; they made the same allowance as other companies on sacks though I think some of the companies only allowed  $7\frac{1}{2}$  cents if I remember right but the Oswego company allowed ten cents. I think they gave us a better price in 1916. I purchased two carloads if I remember at \$2.20, ten cents allowance for sacks for forty cents a barrel.  $7\frac{1}{2}$  cents is thirty cents a barrel. I think all but the Oregon company allowed  $7\frac{1}{2}$  cents for sacks."

Thereupon, under a stipulation, the attorney for the United States read into evidence the testimony of R. A. KLEIN, given upon the former trial of this case, wherein the said Klein, a witness called on behalf of the United States, testified as follows:

**Testimony of R. A. Klein, for the Government.**

"I live in Salem, Oregon; am secretary of the Oregon State Highway Commission; have held this position since July, 1918. Prior to that time I was Division Engineer for the Commission from January, 1918, to July, 1918. Prior to that time during the year 1907 I was employed as resident engineer in charge of field work. In 1914 I was employed by the Highway Commission of Multnomah County in [220] constructing the Columbia River Highway. In 1915 and 1916 I was employed on road construction work in Skamania County, Washington. There was a State Highway Commission in 1914. I was not familiar with the price of cement in 1914 nor in 1915 nor in 1916. I was subpoenaed to bring with me the records of the Commission as to prices bid upon cement in 1914, 1915 and 1916. I have these files with me. I was not in the service of the Commission in 1916 at the time this correspondence was had. It was taken by me from the original files of the Oregon Highway Commission."

The witness produces a number of papers which are offered and introduced in evidence, marked Exhibit 137 and read to the jury.

**Testimony of George McDonald, for the Government.**

Thereupon GEORGE McDONALD was called as a witness on behalf of the United States and testified as follows:

(Testimony of George McDonald.)

“I am at present secretary of the Oregon Portland Cement Company and have been since December 22, 1915.”

Thereupon the witness identified certain papers produced by the witness marked Exhibit 131 and the same were introduced in evidence and read to the jury.

“This letter, Exhibit 131, has the letter ‘H’ on the left-hand corner and I presume it was written by Mr. Hollister who was in the employ of our Company, the same party who was transferred from the Sales Department in March.”

Thereupon this letter identified by the witness was introduced in evidence marked Exhibit 132 and was read to the jury.

“Mr. Robson mentioned in this letter is the gentleman who was in charge of the building material department of Balfour-Guthrie in 1916.”  
[221]

Thereupon a certain telegram addressed to Clark M. Moore and signed by J. E. Moore, dated August 22, 1916, was offered in evidence marked Exhibit 133 and read to the jury.

Thereupon a telegram to Clark M. Moore signed by J. E. Moore dated August 29, 1916, marked Exhibit 134 was introduced in evidence and read to the jury.

“In 1916 until about July 20th J. E. Moore was one of our salesmen—traveling salesmen in the country. After that date he looked after the sales in the office. He is a brother of Clark M. Moore.”

**Testimony of J. E. Moore, for the Government.**

Thereupon J. E. MOORE was called as a witness for the United States and testified as follows:

“I went to work for the Oregon Portland Cement Company about the first of June, 1916. Clark M. Moore is my brother. About the first of June I went on the road selling cement for them as a traveling salesman. I was assistant sales manager in the office later on. I identify this paper as a copy of a telegram which I sent my brother.”

The same was marked Exhibit 135 and introduced in evidence and read to the jury.

“I remember what it was of which I notified all the dealers in less than an hour as set forth in that telegram. It was to get them to handle the Oregon Portland cement, to get them to sell it as dealers. Clark and I had talked over the idea of getting more dealers to handle our cement. At the time of our talk there were only three dealers in this city handling it and we thought it would be a good idea to get more dealers. I don't recall having any communication with my brother in San Francisco, either by telegram or long distance telephone to which this telegram was in answer. I recognize the paper which you show me. [222] It is a carbon copy of a letter.”

The same was introduced in evidence, marked Exhibit 136 and read to the jury.

“I don't know how long at this time my brother had been in San Francisco. This letter, dated August 12, 1916, was addressed to him at the Cliff



(Testimony of J. E. Moore)

House and on the 15th apparently I telegraphed him aboard the Southern Pacific train leaving San Francisco at four o'clock that day. I don't think he was in Portland between the date of the letter and the date of the telegram which I sent. Hansen mentioned in the letter was a salesman for one of the California companies. He was a man that I wanted to eliminate."

**Testimony of C. T. W. Hollister, for the Government.**

Thereupon C. T. W. HOLLISTER was called as a witness on behalf of the United States and testified as follows:

"I am with the Oregon Portland Cement Company. I was first here on January 28, 1907. My last continuous service began in September, 1915. In the early part of 1916 I was in charge of the sales office. In the latter part of 1916 I was on the road for the Company, commencing in August. Since 1916 I have been continuously with the Company in the sales office and on the road. I recognize this carbon copy of letter as one that I wrote."

The letter was offered in evidence marked Exhibit 137 and read to the jury.

"I recognize this letter as one which I received from Mr. Clark M. Moore."

The letter was offered in evidence marked Exhibit 138 and read to the jury.

"I recognize these papers—that is a letter sent by me to Mr. Clark Moore and his answer to it."

(Testimony of C. T. W. Hollister.)

The papers identified by the witness were introduced in evidence, marked Exhibit 139, and read to the jury.

"I recognize this paper as a telegram received by me from Clark M. Moore."

The paper was offered in evidence marked Exhibit 140 and read to the jury.

"I recognize this paper as a copy of a letter written by me to Clark M. Moore."

The same was offered in evidence marked Exhibit 141 and read to the jury.

"Mr. Statter is a local representative of the Pacific Portland Cement Company, a California Company. I recognize these letters as letters written by me and by Clark M. Moore."

The letters identified by the witness were offered in evidence marked Exhibit 142 and read to the jury.

"At that time Mr. Robson mentioned in these letters was in charge of the building department of Balfour-Guthrie & Company and Mr. Statter is the same Mr. Statter who is local representative of the Pacific Portland Cement Company. Golden Gate is a California cement, manufactured by Pacific Portland Cement Company. I recognize this letter as one written by me to Clark M. Moore."

The letter identified is offered in evidence marked Exhibit 143 and read to the jury.

"All the cements mentioned in this letter except Olympic, are California cements. Olympic is a

(Testimony of C. T. W. Hollister.)

Washington cement. I recognize this letter as one received by me from Mr. Clark M. Moore."

The letter identified by the witness was offered in evidence marked Exhibit 144 and read to the jury.

"I recognize this as a carbon copy of letter written [224] by me. The pencil notation in the corner was made by me for Mr. Clark Moore's attention."

The letter identified by the witness was offered in evidence marked Exhibit 145 and read to the jury.

"I recognize this communication to the Oregon Portland Cement Company and my answer to it."

The papers identified by the witness were offered in evidence marked Exhibit 146 and read to the jury.

"Examining that paper again, the carbon shows General Sales Manager, 'M' and 'W' in the corner. The letter was dated June 10, 1916. Mr. Clark Moore was General Sales Manager at that time. We had a Mr. Wellman at that time but whether the 'W' refers to Wellman or the 'M' refers to Clark M. Moore I couldn't tell you. As a rule the first letter on a letter of that kind is the initial of the person dictating, and the second letter the initial of the stenographer who takes the dictation. That was the practice of our office. Our stenographer at that time I think was a Mr. Davidson. I also identify this paper as a carbon copy of a letter taken from the Oregon Portland Cement Company's

(Testimony of C. T. W. Hollister.)

office. The same initials appear on it 'M' and 'W.' I don't question it is Mr. Clark Moore's letter; it is dated June 16, 1916, and he was here at that time and was General Sales Manager."

The paper referred to by the witness was offered in evidence marked Exhibit 147 and read to the jury.

"I recognize these letters as from our file—the Oregon Portland Cement Company's file. That answer was dictated by me. I am trying to think of a stenographer whose initials were 'W.' I think we did have one."

The letters referred to were offered in evidence [225] marked Exhibit 148 and read to the jury.

"When this case was on trial before I was a little confused on the rate question because I had not looked it up. When we went on the market we had a tariff of 8½ cents to Seattle and Tacoma and a 10 cent rate to Aberdeen and Hoquiam. There was a new supplement issued on July 1st. We petitioned the carriers to give us, meantime, an 8½ cent rate to Tacoma and Seattle, against their 5 cent rate from Bellingham and Concrete, and they came out on July 1st with a 10 cent rate to Seattle and Tacoma, Aberdeen and Hoquiam and a 10 cent rate from Bellingham and Concrete to Vancouver, Washington and Portland against the old blanket rate of 8½ cents from Bellingham and Concrete to Portland. This 8½ cent rate to Portland was in effect when we came on the market, June 9, 1916, when our first car was shipped. I think this

(Testimony of C. T. W. Hollister.)

rate was published on the 6th of April. It was in effect when we came on the market. I cannot say without looking it up whether it was published on the 6th of April. I can identify these letters which you now show me."

The same were offered in evidence marked Exhibit 149 and read to the jury.

"I also identify this letter as having been written by Mr. Clark M. Moore and as having come from our files."

The same was offered in evidence marked Exhibit 150 and read to the jury.

"I am the same Mr. Hollister referred to in that letter, the only one who was working for the Company."

Upon cross-examination the witness testified:

"I have some recollection about that clause in the letter exhibit 137, in which I say: 'We called on Mr. Maher, [226] Sales Manager.' I knew the local representatives of the cement companies in a casual way and as an act of courtesy to the representatives in Portland I wanted them to meet Mr. Clark as our new Sales Manager. It was a social call on April 19th, almost two months before we shipped our first car. In the latter part of that letter I write: 'We will see Mr. Statter.' That relates to the Salem bridge. It is the usual custom with cement companies when a large project is coming up like the Salem bridge was, to do all we can to bring about a concrete bridge, and if the contract goes for concrete against steel or any other



(Testimony of C. T. W. Hollister.)

type of bridge construction then it is every cement company for himself, but the steel interests and the timber interests are fighting the cement interests all the time, and if a contract went for a steel bridge, which this one did, and we got the order later, some 5000 barrels,—if it went to concrete it would have run between 35,000 and 40,000 barrels of cement. We didn't get it a concrete bridge. The footings are concrete and the superstructure steel. As I said before all cement companies unite upon contracts of this character to get it turned to concrete. Then after the contract is made for concrete every man works for himself. There is competition between the cement industry as against steel and other industries in building such as brick and tile, terra cotta and all that. In this letter, Exhibit 138, there is some mention about Olympic. The letter speaks for itself. The Olympic had some contracts that they were completing; that is all I know about it. I just made some reports to Mr. Clark Moore to call his attention to conditions existing in Portland at that time and to keep him advised. In Exhibit 139 there is some mention about Grandview and Echo. [227] The Kizer Construction Company, as I understand it, was a subsidiary company of the Warren Construction Company and were down along the Des Chutes River in central Oregon after the irrigation work that was going on up there. There was a Grandview irrigation project going on in central Oregon, a clipping in the paper about it, and I wrote Mr.

(Testimony of C. T. W. Hollister.)

Clark Moore stating that Grandview was in our territory. That is just east of Des Chutes over in central Oregon. There is another Grandview in the state of Washington. To reach Grandview, Washington you have to go to Pasco and go up the Northern Pacific into Central Washington. To this Grandview the rates were less from the eastern Washington mills and less from the western Washington mills than from our mill, and therefore Mr. Clark Moore had misunderstood me about Grandview and he thought I was speaking of Grandview, Washington when I was really speaking of Grandview, Oregon. In Exhibit 141 there is mention of the Oregon City reservoir. This was handled directly by Mr. Wellman who made his reports to me, and at the same time made a report to Mr. Clark Moore, and in this exhibit I was quoting Mr. Wellman. There is something also said in that letter about 'In talking with Mr. Statter to-day he stated that it was a bluff on the part of John Ash.' John Ash was a contractor at Corvallis, but had a letter-head marked as a building material company and he would try to get his material for his construction work such as cement on the basis of a dealer. I don't think I ever spoke to Mr. Statter about it. I worked through another channel to find out the attitude of Mr. Statter and others. Something is said in these letters about a fight between concrete and bitulithic methods. It is a fight between cement interests and the soft pavement, black top or bitulithic. [228] I don't think I ever spoke to

(Testimony of C. T. W. Hollister.)

Mr. Statter about Ash; I think I took the matter up with Robson, sounded out Robson and he would sound for me. At the date of those letters the Oregon Portland Cement Company was marketing its product exclusively through dealers because the dealer is established in business and as a rule has a bank account. The contractor may go broke on a piece of work and the cement company or the material company lose money. At this time when we entered this field we had a very limited capital and were compelled to sell to the man who could take advantage of the cash discount and pay us promptly, in order to carry on the business. We sold no cement in Portland except to dealers, railroads and the United States Government and out in the country we pursued a similar policy. We naturally sold to that dealer nearest home where we could get our returns quickly. The contractor's account, unless he has a strong backing, is a critical account. We didn't sell to the City of Portland in 1916 or make them any quotation or bid. Mr. Clark Moore's letter, in which he says that we are furnishing cement to the City of Portland, means that the dealers were selling the City of Portland, our dealers selling our cement, but we directly had nothing to do with the City of Portland. I don't find the letter to which Mr. Clark Moore's letter to the Astoria Fuel & Supply Company is in answer. I think this letter was one of Charlie Halderman's company roars about the Sanborn Company having a lot of cheap cement, but I know nothing about

(Testimony of C. T. W. Hollister.)

that letter. In Exhibit 143 I undertook to tell Mr. Clark Moore about the stock of cement in Portland. We made it a practice once or twice a month to go to all the wharves. The California companies at that time were [229] shipping practically all their cement to Portland by steam schooners. They got a low rate by lumber carriers, \$1.50 a ton, to bring cement here from bay points in California and they would load the wharves, starting along in February or March, and we made it a practice to keep in touch with the amount of competitive cement in the field; visited the wharves, warehouses on the tracks and as far as we could keep in touch with the amount of cement shipped in from California. We would go to the Merchants Exchange and have them give us reports on the movement of cement from California in order to check up the tonnage in and out. This is a practice which has been in vogue ever since the cement industry has been in existence. Watch your competitor, keep in touch with him all the time, follow him up, see what he is doing, what he is selling, get his price directly and indirectly, any way you can, meet it and if necessary cut it. In this letter I also say that "Mr. Statter is drawing on our stock at Oken's warehouse to-day to fill his requirements for Hassam pavements." Sometimes the California mills, especially that year, ran out of cement due to carriers not getting up, congestion on the railroads or lack of transportation facilities. Then they would buy our cement and keep their contracts going, possibly

(Testimony of C. T. W. Hollister.)

a city contract. This was a city contract and was called cement pavement and they bought cement from us. The Pacific Cement Company bought this cement from us and paid us the full market price. In the same letter I say that Balfour-Guthrie ran an advertisement every other day, on the 10th they advertised Olympic and on the 12th Oregon. This advertisement was in the Daily Record or Abstract, a paper published in Oregon and sent through Oregon and Washington. [230] Therefore they would carry the Olympic brand and the Oregon brand; the Olympic brand was from their mills in Washington, at the same time they carried the Oregon brand in Oregon; they were one of our dealers in Portland. In 1916 the cement test for the City of Portland was 28 days. In San Francisco at that time they required cement to have been in actual use in the City for three years before it could be used for public work. In Exhibit 144 I wrote something about the Gresham matter. Trucks would come in from Gresham with loads of vegetables and produce from the ranches out there; they would pick up cement and take it to Gresham, and a report came in that the Santa Cruz was allowing this back haul to Gresham 19 cents, and this I reported to Mr. Clark M. Moore. I do not recall anything about the reference in one of these letters to a letter of Mr. Fuller. The reference in the letter to a list of contractors who will bid on the Portland postoffice refers to the new Portland postoffice to be built and Mr. Clark M. Moore, as you will



(Testimony of C. T. W. Hollister.)

'notice, on his arrival in Portland sent out letters to the entire list asking for the privilege of quoting. In one of these letters in which Mr. Clark Moore speaks about the Astoria condition I think he is referring to the price there of \$2.58. I do not know anything about the application of Raymond P. Smith mentioned in one of these letters. In regard to the matter of the Auburn Furniture & Hardware Company, that was the matter in which Mr. Elliott asked a price for Oregon Portland cement to him as a matter of curiosity. We couldn't sell cement to him as the freight rate from Bellingham and Concrete to Auburn was 5 cents and our rate on July 1st was 10 cents a hundred. Cement weighs 380 pounds to the barrel, four sacks to the barrel. Ten cents a [231] hundred means 38 cents a barrel; five cents a hundred means 19 cents a barrel. In Exhibit 146, the letter to the Chehalis Brick & Tile Company, and the answer to the same in which it is said that it is not our intention to establish any jobbing agencies; I would say that our company has no agencies. A dealer buys in carload lots, stocks up and resells. An agent takes the cement on consignment and sells and the Company is responsible for his acts. Moreover the Chehalis Brick & Tile Company is a ceramic concern. Ceramic concerns are competitors in the cement business and to give such concerns a dealer's price would give him a better chance to land the work. The Aberdeen Manufacturing Company was a small planing mill at Aberdeen. Mr. Wylie was

(Testimony of C. T. W. Hollister.)

the manager. He is the same man who was on the stand. I have known him for a number of years, knew him when he was in the ceramic business and his account was not to my liking and I gave him an evasive answer and held him off. The correspondence between the Company and F. R. Clark dated 1916 was written on April 25th, about two months before we made our first shipment. We didn't have any cement manufactured; we didn't know definitely what our tonnage would be or what our capacity would be. We could not at that time not knowing the cost of manufacture, make a quotation. In this letter I refer to the rate question as not having been settled. We were hoping to have an 8½ cent rate, the same rate that we had to Seattle and Tacoma, to apply to intermediate points. Our distance to Chehalis was about 90 miles and from Bellingham and Concrete is about 190 miles. We hoped to get the Bellingham and Concrete rate advanced or our rate reduced. We had a rate from Oswego to Centralia at that time. I hadn't looked up this [232] question when I testified upon the former trial of this case. I wrote to John Hughes on May 16, 1916, when we had received a letter from him saying we would have our representative call on him. I was the representative but I cannot recall that I called upon him. My attention is called to Exhibit 150, a letter from Mr. Moore to the Kleinsmith Hardware Company. It refers to some order. This is June 8th; I have tried to ascertain something about taking the order from Mr. Kleinsmith

(Testimony of C. T. W. Hollister.)

during March, but I have been unable to locate it. He visited our plant before it was in operation and he and Mr. Aman Moore became friendly and I don't know whether he gave Mr. Aman Moore an order or not. There was a tentative arrangement made anyway that he was going to handle our cement at Baker. This was made by Aman Moore. I was over in Baker in March but whether I picked up Mr. Kleinsmith's order or confirmation verbally I cannot recall, nor can I find any evidence in our files that I did so."

Upon redirect examination the witness testified:

"I wouldn't have you infer from what I have said about the Kleinsmith matter that Mr. Clark Moore was mistaken in writing the letter which he wrote. I cannot tell how long Mr. Clark Moore remained sales manager of the Oregon Portland Cement Company. I think he remained until 1917 but I cannot tell the period at which he ceased to be sales manager. I have been active in assisting the defense of the trial of this case. Referring to Exhibit 141 I meant to say that I think, I don't remember talking to Mr. Statter. The letter says 'in talking to Mr. Statter to-day he stated that it was a bluff on the part of John Ash,' but I don't remember talking to Mr. Statter. I [233] wouldn't say that I did or did not talk to him; I doubt very much whether I did talk to him. I should not have said that Mr. Elliott used the term 'that it was merely a matter of curiosity.'

(Testimony of C. T. W. Hollister.)

He made the statement here in the courtroom when he was a witness that he wanted to find out what the price was. In selling prior to July 1st our freight rate was 10 cents a hundred, I should say that up to July 1, 1916 we had an 8½ cent rate to Seattle and Tacoma. Auburn is between Seattle and Tacoma. In testifying about the Chehalis Brick & Tile Company on the basis of an agency I said that our company was opposed to establishing agencies; we have always been opposed to appointing agents, this was one of the reasons. Upon having my attention particularly called to Exhibit 146 I note that the letter from the Chehalis Brick & Tile Company does not say anything about an agency."

Upon recross-examination the witness testified:

"When I was asked by the attorney for the defendants I understood I was asked about Mr. Clark Moore's letter, not about the letter from the Chehalis Brick & Tile Company."

### **Testimony of W. C. Smith, for the Government.**

Thereupon W. C. SMITH was called as a witness on behalf of the United States and testified as follows:

"I am purchasing agent for the Northwestern Bridge & Iron Company. In 1915 and 1916 I was purchasing agent for the Northwest Steel Company and prior to that time I was with the Brayton Engineering Company as office manager and purchasing agent. I bought cement in the

(Testimony of W. C. Smith.)

course of my duties in 1916, bought from different companies where we could secure the best prices. We could get once in a while a difference in the price on account of the cartage they said, but prices were practically all the same. In June, 1916 we bought cement from the Pacific Portland Cement [234] Company. I remember that the Oregon Portland Cement Company came upon the market in April, May or June of 1916. The Oregon Company made a higher price than others or the same price; the price was higher on account of the cartage. Several of their salesmen, Mr. Hollister personally, talked to me about this matter. I offered Mr. Hollister some cement business on the same price at which I was buying from the Pacific Portland Cement Company and he said he couldn't meet this price. Afterward we were unable to buy any more cement at the old price from the Pacific Portland Cement Company."

Upon cross-examination the witness testified:  
"We bought our cement from various shippers who represented the various California people. We were located in South Portland and we got a lower price from some California companies because of the cartage. We bought from the shippers and the shippers made the arrangement with the man who was doing the carting. In a good many cases the shippers and cartage people were the same. We bought from James A. C. Tait. After we tried to buy some from the Oregon Portland Cement Company we had to pay more to the



(Testimony of W. C. Smith.)

Pacific Portland Cement Company. This information came to me from Mr. Tait, the man from whom I was buying cement. He told me that he would be unable to deliver any more cement to me at the present prices as he had been notified by the Cement Company that he couldn't have any more cement if he delivered to us at that price. Mr. Tait, as I understood, was a regular dealer in town and represented the Cement Company. The difference in the price was approximately 5 cents a barrel. Whether there was or was not a Teamsters' Association in Portland I couldn't say; they [235] had tried to form one before that but whether it was in operation at that time I cannot say. I don't know about that Association trying to divide the city into zones. We deal entirely with cement companies. We didn't do anything with trucking companies. I don't know whether the city was divided into zones at that time or whether it was on the zone system or not. Upon the former trial of this case I testified and testified upon this question as follows: 'Q. Did that association undertake to divide the city into zones at different places? A. Whether the teamsters did that or the cement companies did that I don't know. Q. It is a fact that was done? A. It was done; they were delivered on a zone system. Q. Wasn't everything delivered on a zone system, whether cement or anything else? A. Sand and gravel were, but what other articles I don't know. Q. Sand and gravel were? A. Yes, sir.

(Testimony of W. C. Smith.)

Q. And cement was? A. Yes, sir.' I was also asked about lumber and said that I got our lumber from the mill. What I testified to before was correct. As I remember we were under a certain different price. I suppose they meant that by zone and this zone regulated the price for the delivery of sand, gravel and cement. I cannot say whether Mr. Tait personally carried any stock of cement or whether the Pacific Portland Cement Company had it on the dock, but he had it right in his place there. He handled it himself and we bought it direct from him and made our payments to Mr. Tait; I am not sure of this—the matter of payment. Oftentimes agents have it billed direct from the Company which they represent. I had a special rate from Mr. Tait for the cement delivered and he was the man who told me that he couldn't deliver any more at that price. He said he cut the price on account [236] of the hauling and that was all the difference there was between the price of the Pacific and the price of Oregon cement."

### **Testimony of W. D. Skinner, for the Government.**

Thereupon W. D. SKINNER was called as a witness on behalf of the United States and testified as follows:

"I am traffic manager of the Spokane, Portland & Seattle Railroad; have been since January, 1913. This road is commonly called the North Bank road. Prior to the first of March, 1915 the rate on cement

(Testimony of W. D. Skinner.)

from Spokane to Portland was 25 cents a hundred pounds."

Thereupon the witness was interrogated in regard to putting in a special rate upon cement in order to get the haul of the cement for the interstate bridge, and to this testimony the defendants by their attorneys, objected upon the ground that the same was irrelevant and incompetent inasmuch as the testimony related to a freight rate and to the efforts of the cement companies of California and western Washington to prevent this freight rate being established and not to interstate commerce, and because it does appear that the Oregon Portland Cement Company had nothing to do with this matter nor had the defendants or either of them; but the court overruled the objection and allowed the testimony to be introduced, and to this ruling the defendants excepted and the witness testified subject to such objections and exceptions, as follows:

"In the hopes of securing the cement for the interstate bridge, early in March, 1915 I undertook to put in a rate of  $13\frac{1}{2}$  cents per hundred pounds from Irwin, a point near Spokane, to Portland. I had the power to name this rate as traffic manager. I identify this slip of writing dated March 6, 1915; it is in my handwriting. After I had written it I handed it to a representative of [237] the cement plant at Irwin, or to Mr. Swigert at Portland."

(Testimony of W. D. Skinner.)

Thereupon this paper, over the objection and exception of the defendants above mentioned, was offered and introduced in evidence, marked Exhibit 151, and read as follows: "S. P. & S. will publish rate 13½ cents on cement c/1 from Irwin, Washington to Vancouver, Washington and Portland, Oregon, if Irwin plant secured contract for interstate bridge cement. W. D. Skinner, F. T. M. Portland, Oregon, 3/6/15."

"c/1 means carload, T. M. means traffic manager. I afterwards learned from the Spokane cement people that they had secured this contract. I identify this letter as a carbon copy of letter received by me from them in that connection."

This carbon copy was offered in evidence over the objection and exception of the defendants to all evidence of this character as above stated and was read to the jury, marked Exhibit 152.

"I also identify this paper as the original answer which I received from these people."

Thereupon two telegrams were offered in evidence marked Exhibit 153 and over the same objection and exception of the defendants were introduced in evidence and read to the jury.

"Objection to the publications of this rate had come from a good many sources, some from other cement companies and good many interests and I think at that time I discussed the question with our president, Mr. Gilman, and concluded to hold the matter in suspense until some of the conflicting interests could be harmonized. Among other

(Testimony of W. D. Skinner.)

parties who protested against that rate were Messrs. Coats [238] and Eden of the Washington cement plant at Concrete, Washington. They were the most vigorous objectors. There were a good many conferences, long distance phones and wires exchanged,—discussions one after another, and it appeared that if we published that rate it would disrupt relations between the cement companies and would be very objectionable to a good many of them, and I finally said that if the Irwin plant and Mr. Swigert, the two parties interested, could be satisfied and were satisfied to release me from my obligation to publish the rate, we would not publish it. I said this to Mr. Eden and to Mr. Coats. They asked me for about a week's time in which to bring about a settlement satisfactory to all concerned. It was a very exciting little period in the early part of March, 1915, so much so that I placed my resignation in the hands of our president in case that would relieve the situation. Some adjustment of the matter was made so that the parties to whom the promise had been made by me did not insist upon the promise being made good. We would have published the rate had they insisted upon it. Our lines do not run into Southwestern Washington or the Sound country. I am not familiar with the rates from Oswego to that territory. What Mr. Hollister testified regarding it seemed to me to be correct but I could not answer for the time which the rates became effective."



(Testimony of W. D. Skinner.)

Upon cross-examination the witness testified:

“One of the representatives of the Oregon Portland Cement Company, Mr. Aman Moore, came to me and discussed this rate question, said that they would soon be in the market and objected to the rate being made. The Oregon Portland Cement Company was not manufacturing cement at that time. It was organized and Mr. Moore at that time said [239] they would be shipping cement in about sixty days. When I spoke of the Oregon Portland Cement Company I had reference to the cement plant at Oswego. There was only one cement plant at Oswego and if its name was Oregon Portland Cement Company there can be no question about its identity. I had some communications with Mr. Aman Moore, none at the time to which I refer to his call. I was wrong when I said sixty days. Mr. Moore said that they would commence shipment in about six months. Mr. Aman Moore said he represented the Portland Cement Company, the Oswego plant. He was opposing this rate too. Whatever answer was made to this letter of March 6th was made by telephone. In the letter of March 9th the following day, from the Cement Company I took it for granted that I told him that we would immediately publish the rate to be effective April 14th. I think that was the tenor of the answer. I do not recall the telephone conversation. I see from the letter written the following day that they say that the writer understood from his verbal talk in Portland last

(Testimony of W. D. Skinner.)

Saturday that all intermediate points would take the same rate. I know, however, that I did not intend to employ the same rates to intermediate points. I had a rate at that time on cement from Portland to Spokane; it was 25 cents, the same in both directions. This rate which I promised to put it was only from Spokane to Portland, not from Portland to Spokane. I had no request for a special rate from Portland to Spokane and I don't suppose we would have made the same rate in that direction. I have a record of what Mr. Aman Moore left with me. Following his call on me I sent a wire as follows: 'Had call this morning from Moore of Portland Cement Company who has wire from Coats who states they will be ready to commence shipment in about six months, [240] and when in operation expects Washington plants, both eastern and western, also California stay out Oregon territory.' This Moore was Aman Moore and the date of that is March 17, 1915."

**Testimony of John F. Keenan, for the Government.**

Thereupon JOHN F. KEENAN was called as a witness on behalf of the United States and testified as follows:

"I live in Seattle and have lived there for thirty-two years, am general manager of the Denny-Renton Clay & Coal Company. I identify this file of papers, marked Exhibit 103. They refer to the Company of which I am general manager. The capitalization of our Company is two million dol-

(Testimony of John F. Keenan.)

lars. I don't think its financial condition has ever been questioned. At the time of the correspondence in Exhibit 103 we made an effort to secure an agency or any other favorable consideration aside from the retailers' price for our Portland yard and our yards in Seattle and Tacoma for cement. We were not successful. I think Mr. Aman Moore called on me after the date of the papers in Exhibit 103. I have but little recollection of this as we were not particularly interested at that time, having found it impossible to secure what we desired. It was never suggested to me as a reason for refusing a quotation in Seattle that our account would not be attractive. We were not given any reason particularly; we were simply staved off from time to time. We paid no attention to the letters because we didn't regard it possible to secure what we desired in regard to the delivery of cement."

Upon cross-examination the witness testified:

"In the letter of March 6, 1916, we referred to Mr. Aman Moore; we didn't know any other Moore at that time. Our principal business is clay products including sewer pipe, paving, brick, fire bricks, electric terra cotta, terra cotta [241] products in general. What we sold of cement was sold with our products covering a considerable quantity of cement, and our patrons when they came to our yard would like to fill their order from one Company instead of going from our yard to some other part of the city to get cement. We never regarded the handling of brick as being in competition with cement

(Testimony of John F. Keenan.)

except on County roads; there was keen competition of course there. Paving brick didn't enter into the trade of which I was speaking, that was generally with the Counties. We sold structural tile also. That let us into competition with cement to a certain extent."

**Testimony of George N. Short, for the Government.**

Thereupon GEORGE N. SHORT was called as a witness on behalf of the United States and testified as follows:

"I am sales manager of the Three Forks Portland Cement Company. I have certain letters from the files of that Company which I was directed to bring in obedience to subpoena. They were given to me by Mr. Block as Government inspector or investigator. I couldn't say whether they are part of the file of the Three Forks Portland Cement Company. I know the signature of Clark M. Moore. The signature on these letters looks like his signature."

The letters were thereupon marked for identification as Plaintiff's Identification 154.

**Testimony of W. E. Burke, for the Government.**

Thereupon W. E. BURKE was called as a witness on behalf of the United States and testified as follows:

"In 1915 up to June 1st I was in charge of the sales of the Three Forks Portland Cement Company. I have seen these letters (referring to the

(Testimony of W. E. Burke.)

letters in Plaintiff's Identification 154). They were received in the mail by me at Three Forks Portland Cement plant from Mr. Clark M. Moore. At that time he was over the sales end of the Three Forks [242] Company and other cement companies. That is his signature upon those letters."

Thereupon the United States rested its case.

Thereupon the defendants offered in evidence the testimony of FRED R. MUHS, a witness called upon behalf of the United States upon the former trial of this case, and the testimony of whom was taken upon the former trial of this case, said testimony being introduced and read to the jury upon stipulation between attorneys for the United States and the attorneys for the defendants, and therein the said witness F. R. Muhs testified as follows:

**Testimony of Fred R. Muhs, for the Defendants.**

"I reside in Oakland, California; am not now in the cement business, but was prior to February, 1918. I am now secretary-treasurer of the San Francisco Bridge Company. I was manager of the Santa Cruz and Standard Portland Cement Companies during the years 1913, 1914, 1915 and 1916 up to October 27, 1916. The Santa Cruz and Standard Portland Cement Companies are separate and distinct corporations, each has its own plant. The plant of the Standard is at Napa Junction, California, about 50 miles north and east of San Francisco. It has a capacity of 2200 to 2500 barrels a day. Its capitalization as I recall it was four



(Testimony of Fred R. Muhs.)

million dollars. Its name was the Standard Portland Cement Corporation; it succeeded to the business of the Standard Portland Cement Company capitalized at two million dollars with a bond issue, but I do not recall the amount of the bond issue. I was manager of the Standard Portland Cement Corporation. The Santa Cruz Portland Cement Company has a plant located at Davenport, California, some 70 or 75 miles north of San Francisco on the Pacific Coast. The Santa Cruz has a capital of five million dollars and a bond issue of two million dollars; it [243] has a capacity of as high as 6500 barrels a day. I was manager also of that company. The officers of the two corporations were the same. The Standard Company had been shipping cement into the State of Washington before my connection with the company in 1907. To the best of my knowledge neither the Standard nor the Santa Cruz had been shipping cement into Washington from the latter part of 1914 on, though I think some small shipments went into Washington from Portland but not from California. The Standard was shipping cement into Oregon when I first became connected with it in 1907. The Santa Cruz didn't begin shipments as I recall until about the end of May, 1907. I know nothing about the conditions since I left the Company, October 27, 1916, but they were both serving the State of Oregon at that time. Necessarily there must have been considerable similarity of prices as between California mills which I represented and the Washing-

(Testimony of Fred R. Muhs.)

ton mills prior to our withdrawal from the State of Washington. If there had not been there would not have been very much sale of the cement which was sold at a higher price. Our interest in the Washington market was dwindling so rapidly that we paid little attention to it so I cannot give a direct statement as to the prices in Washington prior to our withdrawal from that state. As the market went up in price we were very glad to follow any increase made by a competitor; we were very loath to follow the market down. These increases in price were not the result of any understanding between me and the Washington companies. I had some conferences with the Washington mills; I don't think there were any scheduled conferences. I spent considerable time in the Northwest, met Washington manufacturers here and have also met them in [244] San Francisco. I know Al Coats of the Washington, Jack Eden of the Superior and Mr. Cameron of the Olympic personally. I have met all three of these gentlemen together. I do not remember that I met them all together in Seattle. They have been in San Francisco at the same time but there were no scheduled meetings there. I do not recall there being any call meeting in 1914 for the three of them to come to San Francisco at the same time nor how it happened that they did go to San Francisco the latter part of 1914 at the same time. I do not recall definitely meeting them in San Francisco the latter part of 1914; if I was in San Francisco I probably

(Testimony of Fred R. Muhs.)

did meet them. With a few exceptions most of the cement manufacturers on the Pacific Coast have been to San Francisco at different times. Generally the representatives of the four central and northern California companies and the representatives of the three western Washington companies were there. Generally speaking there was no representative of the Riverside Company there. The Riverside Company competed with us more or less as far as freight rates would permit in central California. There was always considerable territory where our freight rates would approximately come together south of San Francisco in which the Riverside Company competed for business. There was always considerable uniformity of prices in California. I do not recall when we withdrew from the Washington territory or whether it was soon after this conference which is said to have taken place between the three Washington companies coming to San Francisco in the latter part of 1914. I don't recall any complaints made by the Washington manufacturers in regard to our participation in the Washington market; they necessarily would have been glad to see us out and let them have their own market. Undoubtedly [245] such a statement was made but I cannot say where. I should say such statements were not made in conference; such statements possibly might have been, the private expression as between myself and one of those manufacturers, possibly more than one of them were present. I do not recall such statements being

(Testimony of Fred R. Muhs.)

made when I and other California manufacturers were present. I think it probable such statements were made to me personally but I have no particular recollection of it. They were probably made at the time they began to serve the market. We were for many years the dominating factor in the Washington market and Galbraith-Bacon & Company who were our agents there were the strongest factor in that market and were handling our cement exclusively. The Washington and Superior mills were started as small mills and for a number of years were unable to supply the cement required in that state and for from three to five years after they started were currently reported to be floundering around financially. They had manufacturing trouble and we were able to stay in that market because they couldn't get down to legitimate and sane manufacturing business. When they did get on their feet and were making good cement and turning it over regularly our interest in that market rapidly declined until with the advent of the mill at Metaline Falls, shut us out of Eastern Washington largely, but not entirely because they were not able to take care of the entire territory. We had been shipping considerable quantities into eastern Washington. About 1913 the Olympic mill started operating and sold in western Washington and the International Company started in eastern Washington and then the scramble for business in Washington became so acute between the Washington companies as a whole that prices reached the point

(Testimony of Fred R. Muhs.)

where we [246] were not interested in that market and would not protect Galbraith-Bacon & Company with prices which enabled them to hold the business which they had. They were loath to give up their prestige in the market and took on some Washington cements for sale. When the scramble for business got very hard the Washington companies gave Galbraith-Bacon & Company a larger commission than we were allowing them so that our business there was practically taken away from us and Galbraith-Bacon & Company dropped us and went to the Washington companies. We had no offices in the Northwest; we were handicapped in securing business. There were many losses by contractors in the cement trade, and believing that those persons who would turn to California to get their product a long way from home, were unable for financial reasons to purchase from the local market, we were not anxious to take their class of business and decided not to file our articles of incorporation in Washington and thereafter solicited no business in that state. I know Mr. Farrington. He was the manager of F. T. Crowe & Company in Portland, who were our agents there. I do not remember a meeting in San Francisco at the Palace Hotel nor do I remember that I told Mr. Farrington that everything had been arranged and that we intended to withdraw from Washington. I don't know whether immediately thereafter the Washington mills did not go farther south than Salem. If they did I was advised but I can't recall it at this



(Testimony of Fred R. Muhs.)

time. I have heard testimony to that effect while sitting here during the course of the trial. I cannot recall when the Washington mills adopted the policy of shipping cement no farther south than Salem. I believe that for a certain time they shipped considerably below Salem but afterwards they confined their sales pretty much to the Portland territory. [247] I don't know when this occurred or when I first heard of it. If this be a fact our office here probably informed me of it; I don't know whether I knew of it in 1916. I believe I was pretty well advised when I was manager, of the Washington market and of the Oregon market. I had nothing to do with advising the Washington manufacturers as to prices to be charged in Washington. At least I do not recall advising them in regard thereto. I think the individual manufacturers in Washington had discussed that question with me, either Eden, Coats or Cameron, possibly all three, but not at the same time. In March, 1914, F. T. Crowe & Company were our agents in Portland and Farrington was their manager. George T. Cameron was president of the Santa Cruz Portland Cement Company and of the Standard Portland Cement Corporation. I have often met cement manufacturers of Washington in Portland. I understand that the Washington mills did withdraw from the State of Oregon; I cannot recall at what time. I believe the Oregon mill started to ship cement sometime the middle of 1916. I know Mr. Butchart, have known him from eight to ten

(Testimony of Fred R. Muhs.)

years. I knew that he was president or in charge of the Canadian mill at Tod Inlet. I know Clark M. Moore. I probably met him about 1910 at what was known as a cement show which is an annual exposition of cement and cement products in Chicago but I am not sure that I met him there. I do not know in what capacity he was employed by cement companies at that time. Later he was the sales manager of the Colorado Portland Cement Company and was connected with what was known as the Boettcher interests but in what capacity I don't know. The Cement Securities Company, as I recall, is a holding corporation of various cement corporations in the Rocky Mountain district. I do not recall meeting Clark M. Moore or Mr. [248] Butchart in San Francisco a few months prior to the starting of the mill in Oregon. I do not remember meeting them in the early part of 1916; I did not meet them early in 1916. I have met them at different times in San Francisco. I have only met Mr. Butchart incidentally when he was passing through town. I never had any particular discussion with him and this would hold pretty much true as to Clark M. Moore. I left San Francisco in November, 1915, and was in New York until about the end of May, 1916. I did not come back by way of Portland. I do not know of any conferences had in San Francisco at which Clark Moore was designated to be sales manager of the Oregon Portland Cement Company. Mr. Sutherland is the sales manager of the Superior Portland Cement

(Testimony of Fred R. Muhs.)

Company, a Washington concern. I have always been on very friendly terms with the Washington manufacturers. I identify this as a telegram sent by me to Mr. Cameron, our president, in 1914. I remember sending this telegram which I identify as one sent by me in March, 1914. I also identify this as a telegram sent by me in 1914."

Thereupon the three papers identified by the witness were read to the jury, marked respectively Defendants' Exhibits 17, 18 and 19.

"We were always in a position to ship into southern California. I don't think we shipped into southern California subsequent to the date of these telegrams. I also identify this as a telegram sent by me to Mr. James, our agent in Portland for the Standard Portland Cement Company at that time. Early in 1914 F. T. Crowe & Company elected only to handle Santa Cruz cement and Mr. James was put in the office selling Standard Portland cement. I sent a correcting telegram July 31, 1914, to the effect that 'if the seventh [249] word is August change it to July' so that under my instructions the price was raised to take effect July 31st."

This telegram was read to the jury and marked Defendants' Exhibit 20.

"I don't know whether other corporations made a similar raise at the same time. I recall nothing as to when the Washington cement companies established Salem as their most southerly point in Oregon to which they would ship cement. I recognize this as a letter from our Standard Corporation."

(Testimony of Fred R. Muhs.)

Thereupon the same was offered in evidence, read to the jury and marked Defendants' Exhibit 21.

"I believe the letter says that the price fixed by our corporation was \$2.30 f. o. b. dock Portland but for Astoria it would be \$2.30 Portland plus freight rate to Astoria. At that time we were shipping to certain points in Oregon by rail and a large part of the cement came in by schooner, by water. I think, generally speaking, all cement shipped to Astoria was shipped by water. I think the Astoria market was supplied from the Portland stock by rail shipment. I don't recall that there was any particular understanding between California cement manufacturers as to the price of cement in Oregon in 1915. We were endeavoring to get our regular established market here. We had to take into consideration prices charged by other California companies as the market was competitive. Prices charged by California companies were known to all. I know of no conference between the California people fixing prices. Being in the same city we necessarily met many times. Undoubtedly there was more or less effort to get the same price, that being the maximum price obtainable in this market. I [250] recognize this correspondence shown to me."

The correspondence marked upon the former trial as Complainant's Exhibit 89 was thereupon read to the jury, the same being marked Defendants' Exhibit 22.

(Testimony of Fred R. Muhs.)

“The Golden Gate is a brand of the Pacific Portland Cement Company; Mt. Diablo cement is a brand of the Henry Cowell Company; both are California companies. I don’t know when the Washington companies withdrew from Oregon; I understand they did withdraw. It was undoubtedly reported to me by our sales officers here at the time they did withdraw. I do not know whether the first intimation that I had that they had withdrawn was contained in the letter from Mr. Jack Eden to me under date July 29, 1916. I have heard that the Oregon cement plant started about the middle of 1916. I recall no correspondence having been had with the Oregon Portland Cement Company as to prices which we were charging for cement in Oregon. I undoubtedly sent them our price list; we sent these to all competitors. I think I sent to Mr. Clark M. Moore at one time a list of freight rates throughout the State of Oregon and I am unable to say whether I did so upon my own initiative or at his request. Any company would be interested in the freight rates of any other company which was selling in competitive territory. I did not know when Clark Moore was to become sales manager of the Oregon Portland Cement Company. I identify this letter as one dictated by me.”

The same was a letter offered in evidence upon the former trial of this case as Complainant’s Exhibit 90 and now marked Exhibit 23 and read to the jury.



(Testimony of Fred R. Muhs.)

“I don’t think I saw Mr. Clark M. Moore in San Francisco about a month prior to the date of that letter; [251] I might have seen him a week prior but I have no recollection of seeing him at all. That is my letter and my signature. The enclosures referred to were freight lists, not the papers which are shown to me.”

This letter was read in evidence to the jury, the same being introduced on behalf of the United States on the former trial of this case and marked Complainant’s Exhibit 91 and now marked Defendants’ Exhibit 23.

Upon cross-examination the witness testified:

“My companies were not shipping into Washington since about 1914. I do not recall whether I sent the price lists at or about the same time that I sent the freight lists. I would not call price lists freight schedules. When I left these companies they were still shipping into Oregon. The price of cement must be practically the same as cement is about one grade, all sold meeting one specification and most all sold at the same market. No company can get any bonus for its cement. There is only one specification for cement that is recognized in the United States. It was established by a technical body called the American Body for testing materials. When we first began marketing cement each manufacturer wrote his own specifications and he made the specifications fit the material which he was making. As time went on there was so much variation in the specifications that there

(Testimony of Fred R. Muhs.)

grew a desire for a uniform standard. At one time the Government had specifications, every department of the Government having different specifications. That has all been harmonized now. There is practically one specification for the Government which is practically the same as the specification of the American Society for Testing Materials. This has been the condition [252] practically as long as I have known anything about cement. The specifications are revised from time to time. Freight rates practically limit the distribution of cement as the price of cement like the price of any other commodity is practically fixed by the competition in the market in which you are selling and what primarily is dependent upon freight rates to cement mills stated at different points manufacturing equally good cement and at practically the same cost of production would be limited in their ability to ship without loss by the freight rates. In the California field the cost of manufacturing is very close with all mills. I first began to deal in cement in 1907 with the Standard and Santa Cruz Companies. At that time the mills were as follows: the California Cement Company with a plant at Colton 50 or 60 miles easterly from Los Angeles; the Pacific Portland Cement Company at Martinez, 60 or 70 miles from San Francisco; the Standard Portland Cement Company at Napa Junction. I do not remember whether Washington mills were then operating or not. About a month after I went with the company the Santa Cruz

(Testimony of Fred R. Muhs.)

Portland Cement Company started its mill. We distributed in Western Montana, Idaho, Washington, Oregon, California, Arizona, Nevada and Utah. These were the only mills in operation in California at that time and possibly one of the Washington mills and there was a small mill in Utah, the product of which was all used for local consumption. The mill at Colton didn't ship into the territory I defined as it was a small mill and unable to supply the territory contiguous to the mill. I do not know the distributing zone of the Pacific Portland Cement Company but probably that Company covered practically the same territory. Afterward the Cowell [253] Cement Company began operations in about 1908 or 1909, the Riverside I believe in 1910, the Superior Portland in about 1908; there were a number of plants added later, two in the Spokane district, I cannot give the date upon which they began operations; there was also a plant added afterward at Three Forks, Montana about 1912 or 1913; the Olympic came into the market in about 1912 or 1913. I once investigated this matter, ascertained the facts and made a minute of it. This was the fall of 1916. I think after the indictment of this case was found this information which I made was in the nature of a map showing the territory once served by our mills. I have a list of cement mills in operation in 1917; California Portland Cement Company, Logan, California, completed prior to 1902. Pacific Portland Cement Company, Cement, California, completed 1902; Standard Port-

(Testimony of Fred R. Muhs.)

land Cement Company, Napa Junction, California completed 1903; Santa Cruz Portland Cement Company, Davenport, California, completed 1907; Superior Portland Cement Company, Concrete, Washington, completed 1907; Washington Portland Cement Company, Concrete, Washington, completed 1907; Cowell Portland Cement Company, Cowell, California, 1909; Los Angeles Aqueduct completed 1909; Riverside Portland Cement Company, Riverside California, completed 1910; Golden State Portland Cement Company, Oro Grande, California; Lehigh Portland Cement Company, Metaline Falls, Washington, completed 1911—I think that had a different name when started, I do not recall the name; it is now operated by the Lehigh Portland Cement Company; International Portland Cement Company, Irwin, Washington, completed 1913; Olympic Portland Cement Company, completed 1913; Oregon Portland Cement Company, Oswego, completed 1916; Mission [254] Portland Cement Company, Victorville, California, completed 1916; Gold Hill Portland Cement Company, Medford, Oregon, established 1917; Old Mission Portland Cement Company, San Juan, California; estimated completion 1917, didn't start operating in 1917; Three Forks Portland Cement Company, Trident, Montana, completed 1909; Union Portland Cement Company, 1907; Ogden Portland Cement Company, Brigham City, Utah, 1911; Utah Portland Cement Company, Salt Lake City, Utah, completed 1902. All of these companies are now operating in the

(Testimony of Fred R. Muhs.)

territory which we served when I first became connected with our company. The plant at Trident I think is a little farther east than we ever served. These several cement companies started business in different parts of the country have absolutely restricted the territory in which we could distribute cement. Utah, a portion of Nevada, all of Arizona, all of southern California, all of Montana which we served, all of Idaho, all of Washington and portions of Oregon has been cut off from us. Cement, being a heavy commodity, its zone distribution is practically limited by freight rates and as these mills came into operation into a territory far away from us they naturally took the market which was their home market. Freight rates for us would be so high as to absolutely prohibit us from competing with these mills in these markets. Mills situated close to the territory consuming cement would have a lower freight rate and would also serve more readily from a standpoint of time than mills farther distant. Our mill at Napa Junction I should judge is 500 miles from Los Angeles so the southern California mills could serve southern California territory better than our mill. Having also a freight rate the mill located in southern California less than the Standard and the Pacific would have, [255] the Standard and Pacific could ship into that territory only at a loss. The building of the Washington mills had the same effect upon our business in Washington. I cannot state how their freight rate compared with ours. The principal



(Testimony of Fred R. Muhs.)

cement markets of western Washington which we reach are Seattle and Tacoma. I think the Washington mills have a rate of about \$1.00 a ton to these points and I should say the central California mills have an average of more than \$2.25 a ton. I don't know what the freight rate was from southern California mills to Washington. I presume it was probably the same as our freight rate. Our ability to ship into that market was only due to the lumber schooners going back without cargo needing some heavy freight to hold the bow down, to buck the northwest gales they were going against. They didn't as a rule carry freight except heavy commodities such as cement. This cement for Astoria would be shipped in the same way, but as that community used a very small amount of cement we were unable to carry a stock of cement at Astoria such as we would carry at Seattle or Portland or some larger community. It frequently happened in the fall especially, that we were short of cars and we would try to stock up during the summer months when there were plenty of cars available; we would try to put a considerable quantity of cement on the docks in Portland and it frequently happened that we would have to supply our Astoria customers from Portland. I am unable to say whether the schooners carrying cement to Portland would stop at Astoria or not. I have some notations in regard to the capacity of these several mills: California Portland Cement Company, 4000 barrels; Pacific Portland Cement Company, 5500 barrels; Standard Portland

(Testimony of Fred R. Muhs.)

Cement Company, 3,000 barrels; Santa Cruz Portland Cement Company, 6,000 barrels; Cowell Portland Cement [256] Company, 3,000 barrels; Riverside Portland Cement Company, 5,000 barrels; Los Angeles Aqueduct Plant, 1200; Southwestern Portland Cement Company, 2,000; Superior Portland Cement Company, 2,000; Washington Portland Cement Company, 2,000; Olympic Portland Cement Company, 1,800; Inland Portland Cement Company, 1,800; International Portland Cement Company, 1,800; Oregon, 1,000; Beaver, 1,000; Union, 2,000; Ogden, 600; Utah, 600; Old Mission, 2,000; Three Forks, 2,000. When I sent out our price list I think other companies also sent out price lists. We used to get some from time to time. I don't think all the companies sent out price lists. Cement was not always sold according to the price list. If a mill was badly in need of tonnage it did not hold to the price list, and at the time I was connected with the industry there were violent fluctuations in all markets. If we had a little cement that we wanted to get rid of we were apt to make a price for it in order to get rid of it. I think frequently we have sold cement at a loss. The first two years we operated the Santa Cruz and Standard plants were not profitable years. At the end of 1908 the management of the company was changed, the old management retired and since that time I think the companies have made money."

Thereupon the attorneys for the defendants asked the witness the following questions: "Now, give the

(Testimony of Fred R. Muhs.)

jury some idea of how profitable it has been, say how much money in proportion to the capital your mills have made." To this question the United States objected on the ground that the same was immaterial and this objection was sustained by the Court and the defendants excepted to the ruling of the Court and the exception was allowed.

The witness further testified: [257]

"Since 1914 when we withdrew from Washington we have made some sales there but didn't solicit any business in Washington as we were hopelessly out of the market established by the Washington mills. They were so anxious to secure business that they made prices at which we didn't care to take the business. While we were operating in Washington our business was conducted through Galbraith-Bacon & Company. In 1913 we did sell a little cement direct to Tacoma Trading Company, but that agency was gathered in by the Olympic Portland Cement Company and we were left out. I do not know when I first met Mr. Clark M. Moore or with what concern he was connected at that time. I did not meet him two months prior to the letter of May 27, 1916, as I left San Francisco the latter part of November, 1915, and did not return to the office until some time in May, 1916. I think there was some meeting of the Portland Cement Association in San Francisco in 1916. This is an association taking in practically all the manufacturers of cement of the United States and Canada, organized for the promotion of the uses of cement to see that

(Testimony of Fred R. Muhs.)

it is properly used so it will do good work, and instructing the people how to use it. This Association issued pamphlets or periodicals for that purpose; it had absolutely nothing to do with fixing prices and the price of cement was never discussed at those meetings. I recognize most of these pamphlets as publications of this Association.”

The witness refers to the pamphlets heretofore offered in evidence but excluded by the Court.

“These periodicals were distributed among our trade, sometimes directly from our office and sometimes through the Association. I think we distributed both to dealers and consumers. I have no recollection of meeting Mr. Clark M. [258] Moore in San Francisco in 1916. If I met him I had a talk with him; I do not recall having any talk with him about prices. I did not have any talk with him about dividing territory or anything of that kind or where he should sell cement or what price he should ask for cement. Mr. Clark M. Moore was in San Francisco once to my recollection, at which time I think some two or three of us were together. I think this was after 1916 although I am not able to say. At this time there was no talk between Mr. Clark M. Moore and myself or those who were with me regarding any division of territory or in what territory we would respectively sell our product and no talk in regard to prices. I know Mr. Butchart. I never attended any meeting of the cement Association at which Mr. Butchart was present; I believe I never attended any meeting of cement manu-

(Testimony of Fred R. Muhs.)

facturers at which Mr. Butchart was present. I think I met Mr. Butchart once at the office of his company in Portland. I cannot tell at what time. I had called to verify a rumor which I had heard that the Oregon Portland Cement Company were going to pay a considerably larger commission to dealers than our companies were paying, and I think Mr. Butchart was in the office at the time I called. I had no talk with Mr. Butchart regarding that feature nor upon the subject. I believe Mr. Clark M. Moore was there at that time, but I had no talk with him in regard to the territory in which he or we or anyone else should sell cement or in regard to the prices at which we or he or anyone else should sell cement. I went there to get information regarding a dealer's commission. The Oregon Portland Cement Company was but a small feature in the cement business on this Coast. I cannot give you the average cement market in the state of Oregon for the last five or six years. I think the last year or two that we operated here we put in [259] something like one hundred thousand to one hundred and ten thousand barrels,—I mean, in 1916 and 1917. We have put in as much as 550,000 barrels in this market in one year. California competitors were also shipping cement into this market at that time. I have no way of approximating how much they were shipping to this market. They were doing an active business here during all that time. I do not remember meeting Mr. Clark M. Moore in San Francisco at the time the



(Testimony of Fred R. Muhs.)

Government had its representative in San Francisco investigating the cement business, establishing prices, etc. The meeting with the War Industry Board was after I had severed my relations with the cement company. I don't remember anything in particular in regard to the Washington mills limiting their trade to Salem on the south in Oregon. The bulk of our cement in Portland came by schooners; south of Salem we endeavored to ship by rail as it was cheaper for us to ship by rail. I cannot tell where our freight rates broke, but shipping to Portland by water was cheaper than by rail and shipping to some point down the valley it was cheaper to ship by rail than by water. I cannot give you the point where it was cheaper to ship by rail than by water. It was some place below Salem, but whether as far south as Albany I cannot say. In connection with the letter offered in evidence about Mr. Crouch: Crouch apparently complains that the price we were asking him for cement would not permit him to sell in competition with his competitors. That was in 1915; I presume it was some case where the county advertised for its requirements for cement for the fiscal year and he was afraid he wasn't in a position to get the business because he claimed competitors were quoting lower prices. The prices in Oregon were based as a rule upon the Portland market, Portland as a [260] base and the Portland base was \$1.90 per barrel net at the docks. The price in San Francisco was \$1.90 net. Generally speaking, the price

(Testimony of Fred R. Muhs.)

of cement at points known as Pacific Coast terminal points, such as Seattle, Portland, San Francisco, Los Angeles, and San Diego, were about on the same level. This condition was brought about by what they used to call a postage stamp rate, all these points having the same freight rate from eastern mills and the same rates from European mills shipping cement at the time that the bulk of the cement coming in was European cement. The big years for European cement were 1907, 1908, 1909, and 1910 or along that time. Since 1910 practically no European cement has come in as the local mills were getting pretty well established and supplying the trade themselves. Furthermore, the vessels that used to come to get grain from our western coast points were mostly withdrawn, the grain moving another way. When the grain ships were coming in, cement was shipped from Europe by these ships at a very low freight rate, rather than carry ballast. When our mills got to about their capacity in California our prices were considerably lower than the prices at which foreign cement has been sold theretofore. Immediately after the San Francisco catastrophe cement sold as high as \$6.00 a barrel. I tried at all times to keep posted as to the market of cement and as to the prices at which our competitors were selling. This was necessary if we wanted to sell our products. We always felt that we were entitled to get as much as they were getting and did not expect to be able to sell if we were trying to get more. When the price of cement was

(Testimony of Fred R. Muhs.)

fixed at \$1.90 in San Francisco and Portland I was not connected with the sales department. At that time the Kansas mills were the big distributors of cement. They [261] had gotten into a chaotic position upon prices and about terms of sale and terms of payment and were selling cement at about 60 cents a barrel net at the mill. The freight rate at that time from their mills to the Pacific coast terminals was about \$7.00 a ton or \$1.33 a barrel, making cement cost here about \$1.93. The coast mills made a price of \$1.90 and this price was better than 3 cents that appears on the surface because of the uncertainty of getting cement in car-load lots from Kansas, the difficulty of getting cars when wanted, the time required for transporting and the freight on return bags which was higher where the bags were returned to Kansas than where returned to the local mills. I am unable to recall the raise in the price of cement from about \$1.70 to \$1.90; it is probable that we figured that our competition would permit us to get that \$1.70. All prices below that had been very unsatisfactory to the cement manufacturers. We took into consideration the cost of manufacture and freight and the competitive conditions at the destination of the cement would be the governing factor."

Thereupon the attorneys for the defendants asked the witness to tell the jury whether in his judgment, taking into consideration the cost of manufacture and the freight which would be paid upon cement, the price fixed was or was not a reasonable price.

(Testimony of Fred R. Muhs.)

The United States objected to this evidence and the objection was sustained and the evidence was not admitted, and to this ruling of the court the defendants excepted and the exception was allowed.

Thereupon the witness further testified:

"I cannot tell you how we happened to fix that price for our cement; I presume in our judgment that was all the competition at the destination would stand; there was competition [262] at all times. I do not remember when this raise was made and have no recollection whether there was any conference with other mills or with any competitors at the time this price was changed and raised."

Upon redirect examination the witness testified:

"The price of cement was \$1.90 f. o. b. San Francisco. The Standard mill is approximately 40 miles and the Santa Cruz mill approximately 70 miles from San Francisco. At some times the price in San Francisco has been lower than \$1.90. When it was \$1.90 in San Francisco it was sometimes \$1.90 in Portland; my recollection is that this was true in 1915 and 1916. I am unable to say whether the price f. o. b. Seattle in 1914 was \$1.90. When you are selling your product you must meet competition. The price of \$1.90 f. o. b. in Oregon was for our own product, our company established the price on our own product here. I would say that the price established by other California mills in Oregon at that time was approximately the same. I don't know which was the first of the companies to establish

(Testimony of Fred R. Muhs.)

that price; it was prior to my connection with the sales department. I don't know whether the price was fixed simultaneously by all companies or not. If a raise was made in the f. o. b. mill price in Portland I would say that this raise was made approximately at the same time by all the California companies."

**Testimony of W. J. Kerr, for Defendants.**

Thereupon W. J. KERR was called as a witness by the defendants and testified as follows:

"I am and for some time have been president of the Oregon Agricultural College. I was not interested when the company was first organized to build a plant at Oswego but became interested soon after, having purchased some stock and I have been interested in that plant as a stockholder [263] at all times since. I was not a director upon the original Board, but was upon the second Board. I presume I remained a director until the last company which finished the plant was organized. My relations with Aman Moore were always friendly. I had quite a substantial interest in the company. I helped to finance the last organization. When I came to Portland I frequently visited the offices and several times visited the plant, was interested in it as an Oregon industry and of course in my investment in it. I nearly always met Aman Moore when I visited the plant, either went with him or found him at the plant. These letters offered in evidence passing between Aman Moore and R. P. Butchart,



(Testimony of W. J. Kerr.)

relating as it is claimed to arrangements which Mr. Butchart was going to make so that his company would have the right to fix prices in Oregon and relating to the territory in which his company's product should be sold, never came to my attention. They were never discussed during this period. I never saw any letters relating to that matter at all. I do not recall that Mr. Aman Moore ever made any statement to me about them. The first time that this question was agitated was when I received a circular letter from Mr. Aman Moore in which he called attention to something of this kind and asked me to give him my proxy to be used at a meeting to be held subsequent to that time. I cannot tell the exact time at which this occurred. I never knew of any claim of that kind before; I never heard of any claim of that kind before. My relations with Mr. Aman Moore were friendly; I never had any difficulty with him at all. I did not see Mr. Aman Moore every time I came to Portland on my official business, but occasionally I did see him and visited the plant."

Upon cross-examination the witness testified:  
[264]

"My duties as president of the Agricultural College occupy my time quite fully."

**Testimony of Paul C. Bates, for the Government.**

Thereupon the testimony of PAUL C. BATES, a witness called upon behalf of the United States upon the former trial of this cause was read to the jury, pursuant to a stipulation between the United States and the defendants wherein the said witness testified as follows:

"I live in Portland, have lived there nearly 26 years; am and during that time have been in the insurance business. At one time I was director and stockholder of the Oregon Portland Cement Company; was a director from the time it was organized and at the time it put its cement upon the market. Because of conflicting statements that I had had made to me as to the prices and policy of the corporation, without saying anything to Aman Moore or any official I decided to make an investigation and had letters written to various representatives of the cement corporations then offering their product in Portland. These were made on the letter-heads of and signed by Inman-Paulson Lumber Company. I also had letters written by other corporations. Before writing these letters I asked Mr. Minor, while he was chairman presiding in the office at regular meetings of the directors, whether any arrangements or agreements had been made, and he denied it. I also asked Mr. Aman Moore; I don't recall whether I asked others or not or whom I asked. Mr. Minor was director and chairman of the meetings when Mr. Moore didn't preside."

(Testimony of Paul C. Bates.)

Thereupon, upon the request of the United States, the witness produced and identified certain letters which were introduced upon the former trial of this cause and marked Complainant's Exhibit 78 and which were read upon [265] the trial of this cause to the jury and marked Defendants' Exhibits 24 and 25.

The witness upon his further examination testified:

"These are the original letters. My investigation was also made through the Tacoma Dredging Company and got replies from the Tacoma Dredging Company."

These letters were read to the jury and offered in evidence upon the former trial of this case and were read to the jury upon this trial.

"I made further investigation, but returned the letters to the Hawley Pulp & Paper Company at Oregon City, through whom investigation was made. After making the investigation I discussed the matter with Mr. Aman Moore, asked him to account for it; he said it was so and that he hoped to have the situation changed. I did not discuss the matter with Mr. Clark M. Moore; I might have met him just once. I was introduced to him at the meeting at which he was made sales manager. I did not discuss the matter with or talk to Mr. Butchart about it. I don't think I ever met him but once or twice. No conversations or discussions were ever had by me or with me in the presence of Mr. Clark M. Moore or Mr. Butchart. I have made no effort

(Testimony of Paul C. Bates.)

to get the letters from the Hawley Pulp & Paper Company. After this investigation I wanted to resign, but Mr. Aman Moore asked me to hold on for a few weeks and I did so in the hope that an investigation would be made to determine whether there was any agreement about maintaining prices or dividing territory. Subsequently there was an investigation held to hear these charges and they didn't consider the charges sustained, so my resignation was sent in and was accepted. I think it must have been sometime [266] in August or the early part of September, 1916; it was prior to the time the indictment was returned."

Upon cross-examination the witness testified:

"These letters were sent entirely upon my own instance without talking the matter over with Mr. Aman Moore. I sent them out because of the claims made by Mr. Aman Moore and the denials made in the meetings. I think Mr. Aman Moore first made this claim the latter part of May, 1916. It was made at a meeting of the directors and also outside of the meeting. I did not disclose to any of the other directors that I was sending these letters or getting these replies because the subject had been discussed and there were about as many denials of it as there were those that were questioning as to whether there was any foundation for the charges. I didn't bring the matter before the other directors because I didn't think the majority of the directors were in sympathy with the charges.

(Testimony of Paul C. Bates.)

Before the directors called for an investigation and a committee was appointed I did not think it to be my duty to tell my co-directors what information I had received. The investigating committee I refer to was Mr. Griffith, Mr. Cookingham, and Mr. Ainsworth. I submitted these letters at that time at a meeting of the Oregon Portland Cement Company's directors early in September at which Mr. Minor was present. There was a full Board meeting and no agreement reached. The letters were not produced at the meeting, but I referred to them. Mr. Andrew C. Smith, Mr. Aman Moore, Mr. Ballard, Mr. Minor, and I think Mr. Newlands was present; I think Mr. Johnson was present, but I would not say positively that he was. Mr. Butchart was not present. I never made the contents of these letters known to Mr. Butchart because he didn't attend the directors' [267] meetings. He attended very few meetings; I only remember his being present at two or three meetings. I knew Mr. Butchart was president, I knew what his duties were as president, I knew how I could reach him, I made no attempt to give him any notice of these letters. I had reasonable ground to assume that Mr. McDonald, the secretary of the corporation, as his representative and he was present at the meeting. I never brought these letters before Mr. Clark M. Moore. I brought them before the directors' meetings, the only body that had any official connection. This was done at the meeting of August, 1916, in the Wilcox Building. I did not



(Testimony of Paul C. Bates.)

produce any letters; I referred to them and to my investigation. I remember that that meeting had been called by Aman Moore as vice-president and also by Mr. Ballard as vice-president. I remember that Mr. Ballard read his own call first and then read the call of Mr. Aman Moore. Mr. Ballard's call was first, I believe, but Mr. Aman Moore claimed that he had made the first call. I think both calls were prepared by Mr. Minor and that he said he would send out a call for meeting for either party. The directors deadlocked as to which call should be taken up first. Nothing was done at that particular meeting; there may have been more than one meeting in August. The meeting to which I refer was one that Mr Griffith attended. It was a directors' meeting; my recollection was that it was in August, but it may have been early in September. The directors sat in one room and the committee in another. I remember now that when the directors couldn't get together a call was made for a meeting of the stockholders and Mr. Griffith was not a director; he attended as proxy for a lot of stockholders; he and Mr. Ainsworth and Mr. Cookingham [268] held proxies from a majority of the stockholders. That is the meeting to which I refer and at that meeting the directors met in one room and the stockholders in another. I remember that at that time all parties had agreed that a meeting of the stockholders should be held and that the stock was practically all represented and that these matters should be threshed out before the stock-

(Testimony of Paul C. Bates.)

holders. Yes, I now remember that when the matter came up before the directors it was referred by the directors to the stockholders. I think at that time Mr. Aman Moore had brought some action or suit; I do not remember the charges which he made in this. I remember that he had actually gotten a preliminary injunction preventing certain parties acting as directors until the further order of the court. I suppose under the order of the court neither Mr. Butchart nor Mr. Newlands nor Mr. McDonald could act as directors. I do not remember the exact tenor of all these matters, but I remember that another injunction was obtained which prevented the stockholders from acting. They met from day to day for several weeks; I didn't attend all the meetings. I believe it is true that the stockholders adjourned from day to day because Judge Wolverton had made an order and they didn't feel that they could act as long as that order was in force. I don't remember all the details. I don't recall that at the meeting at which I tendered my resignation I was not the only director who resigned. There were several plans about resigning; I remember some directors volunteered to resign. I remember that one plan was that two directors from either faction should resign and other directors take their place. I don't know whether the stockholders suggested who should resign or who should take their places. [269] I remember that one director on either side should resign and two new directors should be put in, but I don't remember

(Testimony of Paul C. Bates.)

who the two were. I remember there was a faction in the Board at that time and that I and someone, either Mr. Johnson or Mr. Minor or Mr. Newlands, resigned together and two men were elected and took our places. Then someone else resigned from the Moore faction and someone else from what was called the Boettcher faction and somebody else took their places. I don't recall when I produced these letters. I felt I had an obligation as a director and was not able to find out anything in view of the conflicting opinions. That was my motive in making the investigation. I don't recall that long before that Mr. Aman Moore had brought two suits, one in the name of the corporation and one in his own name; there was so much of it I don't recall. I remember the question was raised whether Mr. Aman Moore had a right to bring suit in the name of the corporation; the matter was brought before the Board of Directors and Mr. Minor's opinion was asked about it and I remember that at that time Mr. Minor demanded an open meeting, that Mr. Aman Moore give him evidence and lay before him evidence of any improper or corrupt action on the part of the corporation. I do not recall what answer Mr. Moore made to this demand; I remember that Mr. Minor stated that he was entitled to the information not only as attorney for the company but also as a director. Apparently these letters and what I had done were never investigated or brought before the Board at all until the hands of the Board were tied. I don't recall when Mr.

(Testimony of Paul C. Bates.)

Clark M. Moore was made a director. Mr. Butchart was not present at any of the meetings to which I have referred. He sent his own proxy and [270] got proxies from his friends and sent them to Ainsworth, Griffith, and Cookingham. I was simply a director and not an officer. I had no agreement with Mr. Aman Moore in regard to my being employed by the company, never contemplated being sales manager. If any inducement of that kind had been offered it would not have been considered. I believe Aman Moore did say something about making me sales manager with a salary of \$5000.00 a year; it was never seriously treated by me. No salary paid by the Oregon Portland Cement Company would have attracted me. I didn't know anything about the bringing of the first suit or the threat to bring the first suit until the suit was brought. I remember that at some meeting of the Board Mr. Minor complained of a suit having been brought against him and others; I remember that Mr. Minor was a party to this suit, a party defendant. I never went to Mr. Minor or to any other director to tell him or them what I was going to do. I was vice-president I remember for a short time, but I don't recall whether it was of the Oregon Portland Cement Company or of the Portland Cement Company. I resigned as director and vice-president at the same time. My resignation was first tendered on June 25th. I don't remember the reason I gave for resigning; I didn't give as a reason that I found that the corporation was do-

(Testimony of Paul C. Bates.)

ing something that I thought was not legal; this matter had already come before the members of the Board. I do not recall that I as vice-president issued the call for a stockholders' meeting; I may have. I remember after tendering my resignation I withdrew it. I did this because Mr. Aman Moore told me that the condition which I was criticizing would not be continued. I do not recall that the suit brought by [271] Aman Moore against the directors had anything to do with my resignation. I remember that before I wrote those letters in 1916 there had been much friction between Mr. Butchart and Mr. Aman Moore and the Board had been much divided between them. I remember that Mr. Butchart issued a call for meeting of the directors to change the by-laws, change the by-laws regarding three vice-presidents and elect one vice-president. We held a meeting, if I remember correctly, and abolished the vice-presidents. This call for the change in the by-laws was made prior to the date of these letters which I have offered in evidence. There were three vice-presidents, Mr. Moore, Mr. Ballard, and myself. I wouldn't say positively that Mr. Minor presided as chairman of any meeting. The meetings were in his office and up to the time that Mr. Moore was removed as manager he presided as a rule. I think he still presided as vice-president at meetings with the exception of possibly one or two meetings. My impression is that Mr. Minor proposed things at the meetings as to the program to be adopted prior to the



(Testimony of Paul C. Bates.)

time the row broke out in May or June, 1916 Everything at the meetings was pretty well ironed out before the meeting was called and was done at the meeting with unanimity."

Upon redirect examination the witness testified: "The only time I offered to present the letters from the various cement companies to Mr. Minor was at the stockholders' meeting where there was this committee holding proxies. I stated at that meeting that I had these letters and that they were welcome to them. I gave these letters as my reason for being inclined to think there was considerable foundation for Mr. Aman Moore's charges; that I felt I was not in harmony with the Board as a whole or in [272] any position to keep in touch with the cement business; that there was too much conflict and having made this investigation for my own private purposes I thought it was better for me to resign than to participate with a board where I was unable to keep in touch with those who were interested financially so much more than I. They did not ask to see the letters. The letters were never called for. The investigating committee about which I have testified was one nominated or appointed by the stockholders. I presented my facts to that committee and also to the further committee appointed by them to reinvestigate the entire subject. Of this second committee Mr. A. King Wilson was chairman. I had an impression that it was fairly well

(Testimony of Paul C. Bates.)

understood what my point of view was and what my investigation had led to."

Thereupon the resignation dated June 24, 1916, was presented and identified by the witness.

The witness testified:

"June 24th was very shortly after the receipt of the letters I got; subsequently I had other letters, some of them dated in July. My resignation was not accepted, it was recalled by me. I put in my resignation as vice-president because of the record which had been brought to my attention about the attempt to remove the vice-presidents and a call for that purpose."

Upon recross-examination the witness testified: "I recognize this book as a minute-book of the corporation during the time when I was director and vice-president. Yes, this is my resignation: June 24th, 'Mr. George McDonald, secretary Oregon Portland Cement Company, 704 Wilcox Building, Portland, Oregon. Dear Sir: Kindly accept this as resignation from the Board of Directors [273] of the Oregon Portland Cement Company, effective at once. This action is taken because of my inability to give proper attention to the responsibilities of the directorship. As a stockholder I wish the company every success. I remain,

Very truly yours,

PAUL C. BATES.'

Adjoining this resignation I find the following: 'In filing my resignation as a member of the Board of Directors of the Oregon Portland Cement Com-

(Testimony of Paul C. Bates.)

pany, I failed to include also the office of vice-president. Kindly accept this as a notice of resignation from both offices.' July 29th I notified Mr. Aman Moore, vice-president of the Oregon Portland Cement Company, 'Referring to my letter of June 24 addressed to the secretary of your company, resigning as director, I beg to state in view of same not having been accepted at this time, upon reconsideration, I beg to announce my recall of said resignation.' In my testimony I have referred to this I believe, and have explained that I had been assured that the condition I was complaining of would be removed. It was not removed to my satisfaction."

### **Testimony of C. Howard Crawford, for Defendants.**

Thereupon C. HOWARD CRAWFORD was called as a witness on behalf of the defendants and testified as follows:

"I reside at Walla Walla, am in the retail lumber and fuel and building material business, connected with the Tum-A-Lum Lumber Company. We handle cement and operate 55 yards handling cement in all of them. The yards are situated in eastern Washington from Walla Walla to Yakima north as far as Pomeroy and from Walla Walla south into Oregon to Pendleton on the main line of the Oregon-Washington Railroad & Navigation Company as far west as Hood River and on branch lines in Oregon, the Deschutes branch, Shaniko [274] branch and the Heppner branch. Over half of these lumber yards are situated outside of a territory

(Testimony of C. Howard Crawford.)

defined as drawing a line from Portland east to the Deschutes river or Umatilla, then south and bounded on the south by a line about Drain or Roseburg. I have been engaged in this business for about 14 years. I don't remember the exact date when the Oregon Portland Cement Company entered the cement market. Prior to June, 1916 we bought cement mostly from the international Portland Cement Company and the Lehigh Portland Cement Company, Spokane Companies. I have a memorandum made by me in my handwriting which gives the price of the Oregon Portland Cement Company and the price of the Lehigh Portland Cement Company, the price of the Oregon Portland Cement Company is as of June 9, 1916 and the Lehigh as of April 8, 1916. This memorandum was made from quotations made me and I made purchases under these quotations. In almost every instance the prices of the Oregon Portland Cement Company to us were 10 cents a barrel less than the quotation we received from the Lehigh Portland Cement Company. The places are Culver, Gateway, Grass Valley, Ione, Irrigon, Lexington, Madras, Maupin, Metolious, Morrow, Redmond, Umatilla, all in Oregon. I recognize this as a copy of a letter received by me."

The same was introduced in evidence marked Defendants' Exhibit 26 and read to the jury.

"In connection with Defendants' Exhibit 26 beside the 10 cent sack allowance and the 5 cent allowance for cash there was a verbal understanding

(Testimony of C. Howard Crawford.)

that we were to receive 10 cents a barrel, dealer's commission. I purchased under these quotations and got the allowance of 10 cents per barrel in reduction of the prices shown by the quotations. I know Mr. Hollister, salesman connected with the Oregon [275] Portland Cement Company; he called upon me and tried to secure orders from me. I don't remember whether he quoted for all of our yards. The memorandum which I have is the only record which I have. I don't remember when I made the first purchase from him, but I think the first time that I met him."

Upon cross-examination the witness testified:

"Culver is on the Oregon trunk of the O.-W. Railroad lines leaving the main line on the Columbia river at Sherman, extending along the Deschutes river. Gateway is on the same line; Grass Valley is on the Shaniko branch, not far from the Deschutes river running out from Biggs between the Deschutes river and Umatilla. Ione is on the Heppner branch running south between Deschutes and Umatilla. Irrigon is between Deschutes and Umatilla, the first town I think west of Umatilla. Lexington is on the Heppner branch, next to Ione. Madras is on the Deschutes branch, Maupin is on the Deschutes branch, Metolius is on the Deschutes branch; Morrow is on the Shaniko branch, Redmond is on the Deschutes branch. I was a dealer in building material in 55 yards. I do not remember getting any quotations from the Oregon Portland Cement Company other than those I have



(Testimony of C. Howard Crawford.)

testified to. In our yards we sold lumber, lime, cement, coal, brick, etc. The Oregon Portland Cement Company never objected to selling cement to us on the ground that we were carrying brick or lumber or competing building material. I think the first time I saw Mr. Hollister he came to Walla Walla. I cannot fix the date.

**Testimony of C. T. W. Hollister, for Defendants.**

Thereupon C. T. W. HOLLISTER, called as a witness on behalf of the defendants, testified as follows:

"I was in the sales department of the Oregon [276] Portland Cement Company in 1916. I have been in the employ of that company continuously since September, 1915. I made my first trip into eastern Oregon March 1, 1916. I went to Pendleton, La Grande, Baker, Pilot Rock and on my return stopped at the Dalles and Hood River. I was sent out to look up the County bond issue in Umatilla County and in Union County and to use my influence to defeat the bond issue and also to visit dealers in the towns and select or recommend the best dealer in each town that I visited. When I returned to Portland the latter part of March I worked in the city under the instructions of Mr. Aman Moore, looking up paving work. At the time of this trip in March, the Oregon Portland Cement Company had not manufactured any cement and had none for sale. I first became acquainted with Mr. Clark M. Moore the latter part

(Testimony of C. T. W. Hollister.)

of April, 1916, met him at the Portland hotel a little after the middle of the month. When I met him he reinstated me in the sales department and I took control of that department during his absence, began by getting up letter-heads, stationery for the company, arranged for telephones and looked after detail matters connected with the establishment of the sales department. I think Mr. Clark M. Moore was in Portland only a few days and I think he returned to Denver, leaving me in charge of the sales office. He directed me beside getting up the stationery and getting the office started, to pick up the tariffs, not only from Portland and the tariff to be used from our mill, but also the tariffs from all competing plants that I could get hold of and prepare a map for him. I prepared such map, giving the lines of all railroads and sent it to Denver so he could have a picture of the Northwest in his Denver office. I don't remember that any instructions [277] were given me by Mr. Clark Moore at that time in reference to making quotations or soliciting business. Clark Moore returned to Portland the latter part of May or the first of June. When he got back we were getting ready for the sales and soon after his return, in June, we started our salesmen on the road and began to canvass. I did not go on the road at that time; I remained in charge of the office practically as assistant sales manager. I had general supervision of the office and the direction of the salesmen on the road. I called on

(Testimony of C. T. W. Hollister.)

three dealers in Portland. We had two salesmen on the road, Mr. Wellman and Mr. J. E. Moore. I think Mr. Clark Moore remained in Portland at that time until the latter part of June. He gave me during that time no instructions as to the territory in which business should be solicited or prices quoted. He returned then to Denver, leaving me in charge. While here, and when he left he gave me no instructions in reference to the territory where I should ship. He told me to get as near as possible what we might term the maximum price, what our competitors were selling for in Portland, but not to be governed strictly by that, get as near that price as possible, but in order to get business make concessions; in other words buy the business. During June I solicited business only from our dealers. At that time we had Balfour-Guthrie, Nottingham and McCracken, appointed by me orally. At that time dealers in cement in Portland were paying the full market price and I gave Nottingham & Company 20 cents a barrel commission and a 1% discount and I gave Balfour-Guthrie & Co. and McCracken Company, 10 cents a barrel commission with a 1% discount for ten days. When we entered the market in Portland the California mills had a \$2.30 price including sacks, ex-wharf, or on car at [278] Portland. The dealers were paying the California cost, \$1.90 net; when I speak of gross \$2.30 there are four sacks to the barrel, sacks 10 cents each. The dealer pays for the sacks, when he makes the pur-

(Testimony of C. T. W. Hollister.)

chase, but when the sacks are returned he is credited 10 cents each or 40 cents a barrel, making the net price to the dealer \$1.90. The price was established here when we entered the market. We gave one dealer 20 cents off, instead of \$1.90 that meant \$1.70 to one dealer; to the other dealers instead of \$1.90 we gave them \$1.80, a cut or commission of 10 cents. When I appointed McCracken & Company, Nottingham & Company and Balfour-Guthrie dealers I knew the territory into which they were shipping. Nottingham & Company were selling in Washington. McCracken was selling in Washington. Boats called at their wharves and picked up cement; they were selling in Portland and tributary towns around also. I knew these facts when I appointed them. When the Oregon Portland Cement Company entered the market it did not sell direct to the consumer; in 1916 it sold directly to the dealer only. In appointing these dealers I knew they were shipping throughout Oregon and parts of Washington and made them no restrictions as to where they should ship or supply the cement sold them. I know Mr. Esterday. He is a concrete sewer pipe manufacturer having a place of business in Portland and one in Vancouver. This was in 1916, he has several more yards now. I met him in 1916: I solicited his business for the Oregon Portland Cement Company. I started talking with him about the latter part of May. The letter, Exhibit 143, dated July 13, 1916, was written and signed by me. It speaks

(Testimony of C. T. W. Hollister.)

of the physical test of cement. Briquets are made up and broken in 7 and 28 days. Specifications of the City of Portland [279] call for all cement to pass the 28 day test. It is the practice to store cement in a quantity so that the tester can take his samples and pass on them. I recognize this paper (paper marked Defendants' Exhibit 27). It was received by me. I solicited this order, it is the first order entered on our books and was for the first car shipped from our mill. This car was shipped June 9, 1916 to the McCracken Company. I recognize these papers, one is the bill of lading for the first car shipped from our mill to the McCracken Company, and the other is the expense bill showing delivery June 13th to the McCracken Company."

The papers identified by the witness are introduced in evidence, marked Defendants' Exhibit 28.

"A test could not be made of the cement until 28 days after the delivery of this car. In the City of Portland all cements must be listed as a grade passing the specifications of the American Society of Testing Materials before they can be accepted by the City of Portland. I first talked to Mr. Esterday in reference to the sale of cement sometime in May but was not able to sell him at that time. I made him a cut; I gave him 10 cents a barrel, price \$2.30 Vancouver, less 10 cents a barrel on the first shipment. I saw him several times before I secured an order and made him a concession sometime before I shipped him. In making



(Testimony of C. T. W. Hollister.)

cement sewer pipe the cement used is of the highest grade, passing all specifications. The manufacturer hesitates to use a new cement and they generally tell you that they will wait until somebody else uses it, until it is established and the qualities known. I don't think in talking to him the question of the listing with the City was discussed. I met Mr. J. C. Ainsworth; he is a stockholder in the Oregon [280] Portland Cement Company and is president of the United States National Bank. When that bank put up a new building in Portland a quantity of cement was used. I called on Mr. Doyle, the architect, but he would not use our cement on such important work as the bank and he said it had not been tried and was an unknown quantity. I made my first trip in Washington in the early part of August, 1916, as salesman for the Oregon Portland Cement Company; went in an auto and made all the towns between Vancouver and Olympia on the north and all the towns in the Grays Harbor country as far as Aberdeen and Hoquiam. The purpose of that trip was to sell Oregon Portland cement. Conditions in that territory at that time were very quiet. I called on both cement dealers in Vancouver; tried to impress upon the Columbia Feed & Fuel Company the advisability of handling Oregon cement as our mill was so close to their business; told them that our price would be our competitor's price and our sacks were 10 cents while the Washington mills at that time were allowing only 7½ cents for

(Testimony of C. T. W. Hollister.)

sacks; this would be 10 cents a barrel reduction. In time of car shortage or shortage in transportation facilities the nearness of the mill is important on account of delivery. The dealer has to carry a smaller stock. I saw Mr. Walter and Mr. McFadden of the Columbia Feed & Fuel Company. I called on the Bennett Hardware Company in Vancouver and tried to sell them but was unsuccessful. I found a friendly working arrangement between the Columbia Feed & Fuel Company and the Washington Portland Cement Company. The Bennett Hardware Company were handling the Superior Portland cement. Mr. Bennett stated that Mr. Eden, president of the Superior, made a concession of 5 cents a barrel special over regular terms. From [281] Vancouver I went north, went to Kalama and called on the dealers; conditions were very quiet. I think the dealers were buying from Nottingham & Company in small quantities by boat. I went to Kelso in Washington; Kelso was quiet. Some work was going on and the dealer there was buying from Nottingham & Company by boat. J. S. Robb was a dealer in Kelso; I think I made a sale to him on that trip but I am not sure. I made a sale to him at some time, either on that trip or on a subsequent trip. This sale caused some trouble for the cement company as Nottingham & Company had been selling them and paying a higher price than that at which I sold and Nottingham was rather put out about it. I went to Castle Rock, saw the dealer there

(Testimony of C. T. W. Hollister.)

and tried to get some business but Castle Rock was quiet. I stopped at Toledo, Washington; there was practically nothing doing at Toledo. I called on the dealers there, quoting prices and meeting the competition. I went to Centralia on that trip, called on the dealers there, quoted prices and met the prices of our competitors. I found out what the dealers were doing in the various towns and from whom they were purchasing and what price they were paying. I met those prices. I went to Montesano, but am not sure whether it was on this trip or the next. I went to Aberdeen and Hoquiam on this trip. Montesano is about 15 miles this side of Aberdeen. I do not recall Simmons Transfer. I remember the name Bush; I think he is located in Montesano. At that time in Montesano they were bringing cement over from Aberdeen by truck. There was no carload business in Montesano. At Aberdeen I called on Mr. Lebo and Mr. Gentry. I called to see Mr. Darragh but I don't remember seeing him. In Hoquiam I called on Mr. Foster. I used my best salesmanship [282] to sell these dealers and was not successful. I think we had shipped to Mr. Lebo prior to this time. I offered to meet all competitive prices. The town of Elmer is in the Grays Harbor country. I visited this town on this trip with Mr. Lebo, sold to Hatfield,—Nickelson & Hatfield; they had a piece of sidewalk work over at Oakvale and I took their order. This sale was made at \$2.58. The Washington price was \$2.60,

(Testimony of C. T. W. Hollister.)

\$2.60 a barrel to Hatfield. We paid Lebo a commission of 10 cents out of that price, making the price \$2.48. When I came back from that trip, I went to eastern Oregon. I wrote the letter dated July 12, 1916, Plaintiff's Exhibit 142, to Clark M. Moore after he had gone back to Denver. J. E. Moore was the person mentioned in this letter as 'your brother' who was a salesman for the Oregon Portland Cement Company upon the road. The office at that time was under my supervision. I heard a part of Mr. Aman Moore's testimony. I am mixed up myself in regard to what he said was the limitation of territory agreed upon by the Oregon Portland Cement Company. Ashland is south of Roseburg; it is practically the last town in Oregon until you strike the California line. J. E. Moore was out under my supervision selling cement. Exhibit 142 dated July 12th refers to a circular letter sent out by Mr. Clark M. Moore. I use the term 'circular' letter; it may be misleading. Mr. Clark Moore dictated a form letter and sent it out. These form letters were sent all over Oregon and Washington, eastern Oregon, southern Oregon and Western Washington. They were sent east of Umatilla and into western Washington. We did not recognize any lines or imaginary lines or lines drawn through the Deschutes or Umatilla on the east, the Columbia River on the north and Drain or Roseburg on the south. These form letters [283] were not confined to any territory. I recognize these two papers; they

(Testimony of C. T. W. Hollister.)

are the form letter or circular letter referred to by me."

The papers identified by the witness were introduced in evidence marked Defendants' Exhibit 29.

"Wasco is on the Shaniko branch, the other side of the Deschutes River. The letter, Plaintiff's Exhibit 144, from Clark Moore to me, dated July 9, 1916, was written after Clark Moore had been here and returned to Denver and when I was in charge of the office. This letter speaks of shipments to Gresham. The rail rate from Portland to Gresham was 5 cents a hundred and a dealer would have to buy a carload to get that rate. Trucks coming in with vegetables, garden produce, would haul cement back at the carload rate; this would save the dealer from buying an entire carload at one time. This matter was mentioned in that letter probably as I had brought it to Mr. Clark Moore's attention as something which I had handled, passed on and settled. I had met the condition; I had authority to use my own discretion in all matters. My second trip to Eastern Oregon was by auto. I stopped at all the towns along the Columbia River such as Bridal Veil, Hood River, The Dalles, then crossed the Deschutes and made the Bend branch as far as Bend. Then I made the Shaniko branch, the Condon branch and went into Pendleton. I canvassed the territory trying to sell cement. I think I returned from Pendleton to Portland. This trip was made during August. I recognize this paper as a carbon copy of a letter."



(Testimony of C. T. W. Hollister.)

The paper is received in evidence marked Defendants' Exhibit 30 and read to the jury.

“When I made the Washington trip and the two Eastern [284] Oregon trips referred to in this letter, Exhibit 30, J. E. Moore was in charge of the Portland sales office. I was transferred from the sales office and given an outside territory, especially Eastern Oregon, upon my request made to Mr. Clark M. Moore. I made the trip into Washington referred to in that letter. I made the same territory I made on the first trip; this trip was made in the early part of September. I visited Woodland, Washington; it was very quiet. I do not remember whether I saw the dealers; I called on them and used my best efforts to obtain an order. I always attempted to ascertain the price at which competitors were selling and to know exactly what our competition should be. I offered to meet our competitors' price and in this territory at this time especially the Washington mills were rebating 7½ cents for sacks and we gave a rebate of 10 cents. I would find out our competitors' prices by asking the dealer; if there was any question about it I would ask for a quotation or invoice. On this trip I went to Kelso and solicited business there, made the entire territory, every town along the line, Castle Rock, Hoquiam, Aberdeen, Chehalis, Centralia, Olympia. I don't recall whether I made any sales at Olympia on that trip or not. The Olympia Hardware Company, a dealer there, claimed that our competitors were making concessions. I don't re-

(Testimony of C. T. W. Hollister.)

member what the concession was. We sold the Chehalis Building Material Company but whether on that trip or not I don't remember. I saw Mr. Lebo on this trip. Our business with him was upon a cash basis as his financial rating was not to our liking. I was in close touch at all times with the sales office. I have recently checked the invoices with reference to the sales made at the time of these various trips about which I [285] have been testifying. On my March trip I sold the Walther-Williams Hardware Company at The Dalles, I did not make them any quotations on that trip; subsequently we met the market price of The Dalles and I made them a concession of \$5.00 a car for handling, amounting to about 3 cents a barrel. I recognize this file; it is a file of duplicates of original invoices that went from the office of the Oregon Portland Cement Company. I have examined all of them and they are all initialed by me. I took them off the records myself."

Thereupon one of these invoices was marked Defendants' Exhibit 31, offered in evidence and read to the jury.

"I was acquainted with the price of cement made by our competitors at Lexington, Oregon at that time. The California mills were quoting \$3.02 less 10 cents dealer's discount; Lehigh Company were selling at \$2.92 without any commission. We allowed the Tum-A-Lum Lumber Company 10 cents a barrel commission or a price of \$2.82 against \$2.92 of the Lehigh. We also allowed them a 5 cents a barrel discount against the California discount of

(Testimony of C. T. W. Hollister.)

1%, 2 cents additional, making a cut against the California of 12 cents and a cut against Lehigh of 10 cents."

Thereupon another of these invoices, a bill to Kleinsmith Hardware Company, Baker, dated July 16, 1916, marked Defendants' Exhibit 32, was introduced in evidence and read to the jury.

"Baker, Oregon, is 242 miles east of the Deschutes River, 342 miles east of Portland."

Thereupon another of the invoices identified by the witness was introduced in evidence, marked Defendants' Exhibit 33, the same being bill dated June 23, shipped to Culver. [286]

"Culver is on one of the branch lines which runs on the Deschutes. The California price at Culver was \$3.02 with a 10 cent dealer's commission, making \$2.92; the Lehigh price was \$2.92 net. We quoted the Tum-A-Lum Company \$2.92, less the dealers' commission, \$2.82 net to the buyer which would be a cut of 10 cents against the Lehigh and a cut of 13 cents against any California mills due to our 5 cents a barrel cash discount and the California mills 1%. The freight rate from Oswego to Culver was 10 cents higher than the freight rate from Portland. Portland was the California shipping point outside of Portland. When I said 10 cents I meant 10 cents a barrel. The rate from Spokane was greater than our rate."

Thereupon another of the invoices identified by the witness was offered in evidence marked Defendants' Exhibit 34, dated June 23, 1916.

(Testimony of C. T. W. Hollister.)

"Maryhill is in Washington, approximately 114 miles east of Portland."

Thereupon another of the invoices identified by the witness was marked Defendants' Exhibit 35, introduced in evidence and read to the jury.

"It is a bill to the Murphy-Wann Company, Marshfield, dated June 27, 1916. Marshfield is down on the Coast. The price of our competitors at Marshfield at that time, the time of this sale, was \$2.63. We met their price at Marshfield."

Thereupon another of the invoices identified by the witness was marked Defendants' Exhibit 36, introduced in evidence and read to the jury, the same being invoice to Bill Miller Lumber Company, Bend, Oregon, dated June 30, 1916." [287]

"Bend is located at the end of the Bend branch, 152 miles southeast of the Deschutes River, taking the Columbia River and the Deschutes as a starting point. The California list prices there were \$3.06 less 10 cents dealer's commission; the Lehigh price was \$2.96 and no commission; our price was \$2.96 less 10 cents dealer's commission and which was a 10 cent a barrel cut over the Lehigh price and a 10 cent cut over the California mill rate. The Lehigh rate into Bend was higher than ours; the California rate from Portland to Bend was 10 cents less than our rate from Oswego."

Thereupon another of the invoices identified by the witness was introduced in evidence marked Defendants' Exhibit 37.

"Myrtle point is south of Marshfield."

(Testimony of C. T. W. Hollister.)

Thereupon another of the invoices identified by the witness marked Defendants' Exhibit 38, was introduced in evidence and read to the jury.

"Goldhill is 151 miles south of Drain and is south of Roseburg."

Thereupon another of the invoices identified by the witness was introduced in evidence and read to the jury marked Defendants' Exhibit 39.

"Myrtle Creek is in Southern Oregon. It is 61 miles south of Drain and is south of Roseburg. I know the price of our competitors at that point. It was 2 cents higher than the price at which this bill was sold as we allowed 5 cents a barrel and the California mills only 1% discount."

Thereupon another of the invoices identified by the witness was marked Defendants' Exhibit 41, introduced in evidence and read to the jury. [288]

"McCall, Washington, mentioned in this invoice, is about 315 miles east of Portland on the Spokane, Portland & Seattle Railway."

Thereupon another of said invoices identified by the witness marked Defendants' Exhibit 42, was introduced in evidence and read to the jury.

"Dayton, Washington, mentioned in this invoice is 280 miles northeast of Portland, up here above Umatilla. J. D. Bower mentioned in this is the same man that I referred to in my letter to Mr. Clark Moore and who had made some inquiries after the circular letter was sent to him."